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INDEX (Cont'd.)

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

NO. 21154

UNITED STATES OF AMERICA,

Appellant,

versus

DELBERT L. YAZELL'S LITTLE AGES, DELBERT L. YAZELL, d/b/a YAZELL'S LITTLE AGES, and ETHEL MAE YAZELL,

Appellees.

Appeal from the United States District Court
Western District of Texas.

RECORD ON APPEAL

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA	)	
Plaintiff	)	
v.	)	CIVIL ACTION
Delbert L. Yazell, d/b/a	)	FILE NO. 1319
YAZELL'S LITTLE AGES, and	)	
Ethel Mae Yazell	)	COMPLAINT
Defendant	)	

TO THE HONORABLE COURT:

The UNITED STATES OF AMERICA, hereinafter referred to as Plaintiff, complains of Delbert L. Yazell, d/b/a YAZELL'S LITTLE AGES, and Ethel Mae Yazell, hereinafter referred to as Defendants, and would show the court:

1. This is an action brought by the UNITED STATES OF AMERICA for and on behalf of the Small Business Administration, an agency and instrumentality of the United States. The Court has jurisdiction of this action under the provisions of Section 634 (b), Title 15, and Section 1345, Title 28, United States Code.

2. Defendants are residents of Lampasas County, Texas within the Western District of Texas, Austin Division.

3. On or about July 10, 1957, Defendants executed and delivered to Plaintiff a promissory note, a true copy of which is attached hereto, marked "Exhibit A", and made a part hereof.

4. There is due and unpaid on said note a principal balance in the sum of $4,719.66 with interest at the rate of 3 percent per annum from August 27, 1962 until paid.

WHEREFORE, Plaintiff demands judgment against Defendants for the sum of $4,719.66 with interest thereon at the rate of 3 percent per annum from August 27, 1962 until paid and for such other relief to which Plaintiff may be entitled including costs.

UNITED STATES OF AMERICA
/s/ By Ernest Morgan

ERNEST MORGAN, United States Attorney
Western District of Texas
P. O. Box 1701, San Antonio 6, Texas

"EXHIBIT A"

NOTE

Lampasas, Texas
$12,000.000 July 10, 1957

For value received, the undersigned promises to pay to the order of Small Business Administration, at the Office of Small Business Administration, in the city of Dallas, State of Texas or, at Payee's option, at such other place as may be designated from time to time by the Payee, TWELVE THOUSAND AND NO/100 ($12,000.00) dollars, with interest on unpaid principal computed from the date of each advance to the undersigned at the rate of three percent per annum, payment to be made in installments as follows: Principal and interest being payable in monthly installments of ONE HUNDRED TWENTY AND NO/100 DOLLARS ($120.-

00), each, including interest, one on the 10th day of each month hereafter, commencing on the 10th day of November, 1957, and continuing until the principal and interest are fully paid, except that the final payment of principal and interest, if not sooner paid, shall be due and payable on the 10th day of June, 1967.

Payment of any installment of principal or interest owing on this Note may be made prior to the maturity date thereof without penalty.

The term "indebtedness" as used herein shall mean the indebtedness evidenced by this Note, including principal, interest, and expenses, whether contingent, now due or hereafter to become due and whether heretofore or contemporaneously herewith or hereafter contracted. The term "Collateral" as used in this Note shall mean any funds, guaranties, or other property or rights therein of any nature whatsoever or the proceeds thereof which may have been, are, or hereafter may be, hypothecated, directly or indirectly by the undersigned or others, in connection with, or as security for, the Indebtedness or any part thereof. The Collateral, and each part thereof, shall secure the indebtedness and each part thereof. The covenants and conditions set forth or referred to in any and all instruments of hypothecation constituting the Collateral are hereby incorporated in this Note as covenants and conditions of the undersigned with the same force and effect as though such covenants and conditions were fully set forth herein.

The indebtedness shall immediately become due and payable, without notice or demand, upon the appointment of a receiver or liquidator, whether voluntary or in-

voluntary, for the undersigned or for any of its property, or upon the filing of a petition by or against the undersigned under the provisions of any State insolvency law or under the provisions of the Bankruptcy Act of 1898, as amended, or upon the making by the undersigned of an assignment for the benefit of its creditors. Payee is authorized to declare all or any part of the Indebtedness immediately due and payable upon the happening of any of the following events: (1) Failure to pay any part of the Indebtedness when due; (2) nonperformance by the undersigned of any agreement with, or any condition imposed by, Payee with respect to the indebtedness; (3) Payee's discovery of the undersigned's failure in any application of the undersigned to Payee or to disclose any fact deemed by Payee to be material or of the making therein or in any of the said agreements, or in any affidavit or other documents submitted in connection with said application or the indebtedness, of any misrepresentation by, on behalf of, or for the benefit of the undersigned; (4) the reorganization (other than a reorganization pursuant to any of the provisions of the Bankruptcy Act of 1898, as amended) or merger or consolidation of the undersigned (or the making of any agreement therefor) without the prior written consent of Payee; (5) the undersigned's failure duly to account, to Payee's satisfaction, at such time or times as Payee may require, for any of the Collateral, or proceeds thereof, coming into the control of the undersigned; or (6) the institution of any suit affecting the undersigned deemed by Payee to affect adversely its interest hereunder in the Collateral or otherwise. Payee's failure to exercise its rights under this paragraph shall not constitute a waiver thereof.

Upon the nonpayment of the Indebtedness, or any part theof, when due, whether by acceleration or otherwise, Payee is empowered to sell, assign, and deliver the whole or any part of the Collateral at public or private sale, without demand, advertisement or notice of the time or place of sale or of any adjournment thereof, which are hereby expressly waived. After deducting all expenses incidental to or arising from such sale or sales, Payee may apply the residue of the proceeds thereof to the payment of the Indebtedness, as it shall deem proper, returing the excess, if any, to the undersigned. The undersigned hereby waives to the full extent permitted by law all right of redemption or appraisement whether before or after sale. At any such sale payee may become the purchaser of the whole or any part of the Collateral free from any right of redemption so far as permitted by law. Without limiting or affecting such power of sale, Payee is further empowered, upon the nonpayment of the Indebtedness, or any part thereof, when due, to collect or cause to be collected or otherwise to be converted into money all or any part of the Collateral, in the name of Payee or the undersigned or otherwise, by suit or otherwise, and to surrender, compromise, release, renew, extend, exchange, or substitute any item of the Collateral in transactions with the undersigned or any third party, irrespective of any assignment thereof by the undersigned, and without prior notice to or consent of the undersigned or any assignee. Whenever any item of the Collateral shall not be paid when due, or otherwise shall be in default, whether or not the indebtedness, or any part thereof, has become due, Payee shall have the same rights and powers with respect to such item of the Collateral as are granted in respect thereof in this para-

graph in case of nonpayment of the Indebtedness, or any part thereof, when due. None of the rights, remedies, privileges, or powers of Payee expressly provided for herein shall be exclusive, but each of them shall be cumulative with and in addition to every other right, remedy, privilege, and power now or hereafter existing in favor of Payee, whether at law in equity, by statute or otherwise.

The undersigned agrees to take all necessary steps to administer, supervise, preserve, and protect the Collateral; and regardless of any action taken by Payee, there shall be no duty upon Payee in this respect. The undersigned shall pay all expenses of any nature, whether incurred in or out of Court, and whether incurred before or after this note shall become due at its maturity date or otherwise, including but not limited to reasonable attorney's fees and costs, which Payee may deem necessary or proper in connection with the satisfaction of the In debtedness or the administration, supervision, preservation, protection (including, but not limited to, the maintenance of adequate insurance) of or the realization upon the Collateral. Payee is authorized to pay at any time and from time to time any or all of such expenses, add the amount of such payment to the amount of the Indebtedness and charge interest thereon at the rate specified herein with respect to the principal amount of this Note.

The security rights of Payee and its assigns hereunder shall not be impaired by Payee's sale, hypothecation or rehypothecation of any note of the undersigned or any item of the Collateral, or by any indulgence, including but not limited to (a) any renewal, extension, or modification which Payee may grant with respect to the Indebtedness or any part thereof, or (b) any surrender,

compromise, release, renewal, extension exchange, or substitution which Payee may grant in respect of the Collateral, or (c) any indulgence granted in respect of any endorser, guarantor, or surety. The purchaser, assignee, transferee, or pledgee of this Note, the Collateral, any guaranty, and any other document (or any of them), sold, assigned, transferred, pledged or repledged, shall forthwith become vested with and entitled to exercise all the powers and rights given by this Note and all applications of the undersigned to Payee, as if said purcaser, assignee, transferee, or pledgee were originally named as Payee in this Note and in said application or applications.

/s/ Delbert L. Yazell
(Delbert L. Yazell)

/s/ Ethel Mae Yazell
d/b/a Yazell's Little Ages

Note. — Corporate applicants must execute Note, in corporate name, by duly authorized officer, and seal must be affixed and duly attested; partnership applicants must execute note in firm name, together with signature of a general partner.

MODIFICATION OF PROMISSORY NOTE

Re: DL 283,016-LAM-DAL
Delbert L. Yazell, d/b/a
Yazell's Little Ages
412 South Live Oak Street
Lampasas, Texas

WHEREAS, heretofore and under date of July 10, 1957, Delbert L and Ethel Mae Yazell, d/b/a Yazell's Little Ages (hereinafter called "Borrower"), made, executed and delivered to the Small Business Administration, their promissory note, in the original principal amount of $12,000., payable in monthly installments of $120. each, including interest at the rate of 3 percent per annum, final maturity date of said note being June 10, 1967, and,

WHEREAS, it is mutually desirable, beneficial and agreeable to the parties hereto that the repayment terms of said note be modified so as to provide for the maturity date as set out in Loan Authorization.

NOW, THEREFORE, in consideration of the mutual benefits inuring to each other, it is understood and agreed, by and between the parties hereto, that the terms and conditions of Borrower's Note, as above described, are hereby modified as follows:

All principal and interest not sooner paid shall become due and payable 10 years from date of note.

It is further understood and agreed that all other terms, conditions and covenants of the aforesaid Note, not otherwise modified hereby, shall be and remain the same, and that this Agreement, when executed by the parties here-

to, shall be attached to and become a part of the original Note, and shall have the same force and effect as if the terms and conditions hereof were originally incorporated in the note, prior to its execution thereof.

IN WITNESS WHEREOF, this Agreement is executed by the undersigned parties as of 26 day of Nov., 1957.

/s/ Delbert L. Yazell
Borrower

/s/ Ethel Mae Yazell
Borrower

SMALL BUSINESS
ADMINISTRATION

By: A. W. Buchek, Chief, FAD

The undersigned endorsers, guarantors and/or sureties on the above described Note hereby join in and consent to the above Modification Agreement.

Dated this day of ,19 .

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN, TEXAS

UNITED STATES OF AMERICA Plaintiff	)	
VS.	)	CIVIL ACTION
DELBERT L. YAZELL, d/b/a/ YAZELL'S LITTLE AGES, and ETHEL MAE YAZELL Defendant	)	FILE NO. 1319

MOTION OF DEFENDANT ETHEL MAE YAZELL FOR SUMMARY JUDGMENT

TO SAID HONORABLE COURT:

Now comes Ethel Mae Yazell, one of the defendants herein, and moves the Court for summary judgment in favor of this defendant Ethel Mae Yazell on all of the plaintiff's claim alleged against said defendant. The pleadings and the attached affidavit show that there is no material fact issue as to the defendant Ethel Mae Yazell, and that she is entitled to a judgment that the plaintiff take nothing by reason of its suit against her, that no personal judgment be rendered against her, and that no judgment affecting any separate estate that she may now or hereafter have, be rendered against her, all of which appears as a matter of law from the pleadings of the plaintiff and of this defendant herein.

WHEREFORE, defendant Ethel Mae Yazell prays that after notice and hearing as provided by law, a judgment be rendered herein that the plaintiff take

nothing by reason of its suit against defendant Ethel Mae Yazell, that in any event no personal judgment be rendered against her, and that no judgment be rendered against her affecting any separate property that she may have or hereafter own.

Attorney for Defendant Ethel Mae Yazell
/s/ J. V. Hammett
P. O. Box 111
Lampasas, Texas

ORDER

The foregoing Motion is set for hearing in the United States District Courtroom in Austin, Texas, on the ..... day of ....., 19....., at ..... o'clock ....M.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion of defendant Ethel Mae Yazell for summary judgment has been delivered to Hon. Ernest Morgan, United States Attorney, San Antonio, Texas, attorney of record for plaintiff, by depositing same properly addressed to the said Ernest Morgan, P. O. Box 1701, San Antonio 6, Texas, in a properly stamped envelope in the United States mail at Lampasas, Texas, on the 8th day of December, 1962.

/s/ J. V. Hammett
J. V. Hammett

THE STATE OF TEXAS
COUNTY OF LAMPASAS

ETHEL MAE YAZELL, being duly sworn, states that she is one of the defendants in the above entitled action; that she makes this affidavit in support of her motion for summary judgment herein, and that she has personal knowledge of the facts herein set forth.

I.

Affiant is a married woman, and she was a married woman on the date and at the time she signed the note made the basis of plaintiff's suit herein. She was a married woman prior to such time and has been a married women at all times since and now is a married woman, and at all said pertinent times being married to Delbert L. Yazell.

Affiant's disabilities as a married woman have never been removed. ?

The promises and undertakings made the basis of plaintiff's suit against her were not made for necessaries, were not made for the benefit of affiant's separate property, and were not incurred in the management, control and disposition of affiant's separate property. Affiant signed said note solely as surety for her husband, and she did not have the legal capacity at such time or at any time since to bind her separate property by any such promises, contracts or undertakings made the basis of plaintiff's suit herein.

Affiant further states that plaintiff, its agents, servants and employees know and had actual knowledge of

her coverture at all times pertinent to the events and transactions made the basis of plaintiff's suit.

/s/ Ethel Mae Yazell

Sworn to and subscribed by Ethel Mae Yazell before me the undersigned authority, a notary public in and for Lampasas County, Texas, on this 8th day of December, 1962, to which witness my hand and seal of office.

/s/ J. Wain Simmons
Notary Public, Lampasas County, Tex.

My commission expires:
June 1, 1963.

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA Plaintiff	)	
VS.	)	CIVIL ACTION
DELBERT L. YAZELL, d/b/a/ YAZELL'S LITTLE AGES, and ETHEL MAE YAZELL Defendant	)	NO. 1319

DEFENDANT'S ORIGINAL ANSWER

TO SAID HONORABLE COURT:

Now come Delbert L. Yazell, d/b/a/ Yazell's Little Ages, and Ethel Mae Yazell, defendants, and file this their original answer to plaintiff's complaint and thereby respectfully show unto the Court:

I.

Defendants admit the allegations contained in Paragraphs 1, 2 and 3 of the complaint.

II.

Defendants severally say, each for himself, that he has no knowledge or information sufficient to form a belief as to the truth of any of the allegations of Paragraph 4 of the complaint.

III.

Defendant Ethel Mae Yazell was a married woman on the date and at the time she signed the note made the

basis of plaintiff's suit herein. Prior thereto, at all times since and now, she was and is married, at all of said pertinent times being married to Delbert L. Yazell. Her disabilities of coverture have never been removed. The promises and undertakings made the basis of plaintiff's suit were not for necessaries, were not made or the benefit of any separate property of defendant Ethel Mae Yazell, nor were the same incurred in the management, control and disposition of any separate property belonging to her. She signed the note, made the basis of plaintiff's suit solely as security for her husband and she did not have legal capacity to bind herself or her separate property by any such promises, contracts or undertakings made the basis of plaintiff's suit herein.

Plaintiff, its agents and representatives, knew and had actual knowledge of such coverture at all times pertinent to the events and transactions made the basis of plaintiff's suit.

Defendant Ethel Mae Yazell hereby pleads and asserts her coverture in bar of plaintiff's alleged cause of action against her.

IV.

Defendant Delbert L. Yazell alleges that he is entitled to a set-off against any recovery by plaintiffs by reason of the following: The note sued upon was secured by a chattel mortgage covering furniture, fixtures and equipment, together with all merchandise in the store at Lampases heretofore operated by defendant under the name of Yazell's Little Ages. When defendant could not pay the note as it matured, a representative of plaintiff informed him that Small Business Administration would

handle the sale of such property, which then had a reasonable market value of $10,000.00, or more. Defendant understood from plaintiff's representative that the property would not be sold for an inadequate price, otherwise he would not have turned the property over to plaintiff for sale. Nevertheless, plaintiff sold all such property for a total sum of about $1500.00, the exact amount being unknown to defendant but well known to plaintiff, which sum was and is wholly inadequate. The negligent sales of defendant's property as aforesaid has damaged defendant in the amount sought to be recovered by plaintiff and defendant is entitled to set off his damages against any amount that plaintiff may recover herein against him.

WHEREFORE, having fully answered plaintiff's complaint herein defendants pray that plaintiff take nothing by its suit against either defendant and the defendant Ethel Mae Yazell specially prays that her defense of coverture be sustained and that she be dismissed from plaintiff's suit; in any event that plaintiff take nothing by reason of its against her and that no personal judgment be rendered against the said Ethel Mae Yazell; that each and both defendants go hence without day and recover their costs herein.

/s/ J. V. Hammett
J. V. Hammett

P. O. Box 111
Lampasas, Texas
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Original Answer of Defendants has been delivered to Hon. Ernest Morgan, United States Attorney, San Antonio, Texas, attorney of record for plaintiff, by depositing same properly addressed to the said Ernest Morgan, P. O. Box 1701, San Antonio 6, Texas, in a properly stamped envelope in the United States mail at Lampasas, Texas, on the 8th day of December, 1962.

/s/ J. V. Hammett

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA	)	
Plaintiff	)	
VS.	)	
DELBERT L. YAZELL, d/b/a/	)	CIVIL ACTION
YAZELL'S LITTLE AGES, and	)	FILE NO. 1319
ETHEL MAE YAZELL	)	
Defendant	)	

RESPONSE AND AFFIDAVIT IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT
ETHEL MAE YAZELL

TO THE HONORABLE COURT:

Now comes Plaintiff, UNITED STATES OF AMERICA, and in opposition to the Motion of Defendant, Ethel Mae Yazell, For Summary Judgment heretofore filed herein, presents the Affidavit of James R. Woodall which is attached hereto and made a part hereof.

WHEREFORE, Plaintiff prays that the Motion for Summary Judgment heretofore filed in this cause by Ethel Mae Yazell be in all things denied.

/s/ Ernest Morgan

UNITED STATES ATTORNEY
P. O. BOX 1701
SAN ANTONIO, TEXAS

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA	)	
Plaintiff	)	
VS.		CIVIL ACTION
DELBERT L. YAZELL, d/b/a/	)	
YAZELL'S LITTLE AGES, and	)	FILE NO. 1319
ETHEL MAE YAZELL	)	
Defendant	)	

AFFIDAVIT OF JAMES R. WOODALL
IN OPPOSITION TO MOTION FOR SUMMARY
JUDGMENT BY THEL MAE YAZELL

In opposition to the Motion for Summary Judgment heretofore filed in this cause by Defendant Ethel Mae Yazell, the undersigned Affiant states on his oath:

1. May name is James R. Woodall. I am Acting Regional Director of Small Business Administration, Region X, 1025 Elm Street, Dallas, Texas.

2. I am over 21 years of age, am of sound mind, have never been convicted of any crime or offense and have personal knowledge of every statement herein made and am fully competent to testify to the matters stated herein.

3. In every case where financial assistance is granted by Small Business Administration, by the way of making a loan, the conditions on which the loan will be made are embodied in an official instrument designated Authorization. A copy of the Authorization is furnished to the

borrower who must accept the conditions and fully comply with all of them prior to disbursement of the loan funds.

4. No officer nor employee of the Small Business Administration has any authority to disburse loan funds on any conditions other than those expressly provided by the official Loan Authorization.

5. The loan extended to defendants in the subject case was disbursed pursuant to an Authorization which specifically required that the note and all instruments of hypothecation be signed by borrowers wife, Ethel Mae Yazell.

/s/ James R. Woodall
James R. Woodall
ACTING REGIONAL DIRECTOR
REGION X

ACKNOWLEDGMENT

Sworn to and subscribed before me by James R. Woodall, the said Affiant on this 16th day of January 1963.

/s/ Eddie Mae Britton
Eddie Mae Britton
Notary Public in and for Dallas
County, Texas

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA	)	
Plaintiff	)	
VS.	)	
DELBERT L. YAZELL, d/b/a/	)	CIVIL ACTION
YAZELL'S LITTLE AGES, and	)	FILE NO. 1319
ETHEL MAE YAZELL	)	
Defendant	)	

PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS AND FOR SUMMARY JUDGMENT

TO THE HONORABLE COURT:

Comes now Plaintiff, UNITED STATES OF AMERICA and pursuant to Rule 12 (c) and Rule 56 of the Federal Rules of Civil Procedure, moves the Court for judgment on the pleadings and/or for summary judgment for all relief sought by Plaintiff in the complaint heretofore filed herein. In support of this motion, Plaintiff would show the Court:

1. The Answer of Defendants heretofore filed herein admitted the allegations of paragraphs 1, 2, and 3, of the Complaint.

2. Paragraph II of Defendant's Original Answer in response to the allegations of paragraph 4 of Plaintiff's Complaint are insufficient to constitute a denial thereof. The asserted defense of Defendant does not comply with the requirements of Rule 8 (c) of the Federal Rules of

Civil Procedure and pursuant to the provisions of Rule 8 (d) all allegations in paragraph 4 of the Complaint should be taken as admitted.

3. The Affidavit of James R. Woodall annexed to a Pleading designated as Response and Affidavit in Opposition to Motion for Summary Judgment by Defendant Ethel Mae Yazell, which Pleading and annexed Affidavit have heretofore been filed herein, is fully incorporated by reference herein and made a part hereof.

4. To secure the indebtedness evidenced by the Note alleged in paragraph 3 of the Complaint, Defendants Delbert L. Yazell, and Ethel Mae Yazell executed a chattel mortgage covering certain stocks of goods and furniture and fixtures located on their premises in Lampasas, Texas. A true copy of this instrument is annexed hereto marked "Exhibit A", and made a part hereof.

5. All of the property covered by the aforesaid mortgage was sold by Defendants, with the consent of Small Business Administration, with the exception of certain items of furniture, fixtures, and machinery which were sold at public action on August 27, 1962 by Small Business Administration employee Charles Motz, pursuant to the terms of the instrument of mortgage. An itemized list of the items sold at auction on Defendant's premises on August 27, 1962 pursuant to the terms of the mortgage ,is annexed hereto as "Exhibit B", and made a part hereof.

6. The Affidavit of L. W. Massett relating to disposition of the mortgaged property is annexed hereto and made a part of this Motion.

7. There is no genuine issue as to any material facts and plaintiff is entitled to a judgment for full recovery against Defendants, jointly and severally as a matter of law.

WHEREFORE, Plaintiff prays for summary judgment for all relief sought in the Complaint.

/s/ Ernest Morgan
UNITED STATES ATTORNEY
P. O. BOX 1701
SAN ANTONIO, TEXAS

EXHIBIT A

CHATTEL MORTGAGE

STATE OF TEXAS)
COUNTY OF LAMPASAS)

KNOW ALL MEN BY THESE PRESENTS, That the undersigned, DELBERT L. YAZELL and wife ETHEL MAE YAZELL, d/b/a Yazell's Little Ages, of Lampasas County, Texas, hereinafter called the Mortgagors, whether one or more, in consideration of the sum of One ($1.00) Dollar and other valuable considerations to us in hand paid by Small Business Administration, an Agency duly created under and by vurtue of an Act of Congress, having its principal office in Washington, in the District of Columbia, and a Regional Office at 1114 Commerce Street, Dallas, Texas, hereinafter called Mortgagee, whether one or more, have BARGAINED, SOLD AND CONVEYED and by these presents do BARGAIN, SELL AND CONVEY unto the said Mortgagee, his, her it or their successors, heirs and assigns, the following described personal property now located and situated in Lampasas County, State of Texas, together with all new or substituted parts, accessories, equipment and appurtenances that may now be on or hereafter be added or placed thereon (in the event said property be live stock, then together with all the produce from and all the increase, if any, of, from and to the said live stock) prior to the full payment of the indebtedness hereby secured, as follows, towit:

(1) The entire stock of goods, wares and merchandise of the business known and conducted as Yazell's Little Ages, and being located at 410 South Live Oak

Street, in Lampasas, Texas, all of which said goods, ware and merchandise are in the possession of the undersigned mortgagors doing business as Yazell's Little Ages.

It is the intention of the parties to this chattel mortgage to include and here is hereby expressly included in and made subject to this chattel mortgage all future additions to or substitutions for said stock of goods, wares and merchandise as the same exists on this date, said additions and/or substitutions being contemplated. In this connection it is expressly agreed between the parties hereto that all the proceeds of sales from said stock of goods, wares and mechandise made in the regular course of business, or otherwise, shall be applied to the purchase of new goods, wares and merchandise to be sustituted for the goods, wares and merchandise sold in the regular course of business, unless the said proceeds be paid on the indebtedess secured by this mortgage.

Of the indebtedness secured hereby, the sum of $9,000.00 has been advanced by mortgagee as purchase money to pay for the stock of goods, wares and merchandise covered by this chattel mortgage, and the mortgagors expressly covenant with the mortgagee that they will at all times maintain their inventory of said goods, wares and merchandise in an amount not less than $9,000.00 so long as any part of purchase money aforesaid remains unpaid. It is further agreed that all payments made on the principal of the above described indebtedness shall be credited on the unpaid balance thereof, and shall be conclusively presumed to have been allocated to said purchase money in the same proportion that the original purchase money herein stated bears to the total indebtedness secured hereby.

(2) All of the furniture, fixture and equipment in Yazell's Little Ages, located at 410 South Live Oak Street, in Lampasas, Texas, or hereafter to be acquired by the said mortgagors in connection with said business, including without limitation of the foregoing generality the following items: 1 Triple Mirror 24x48"; 2 all glass show cases; 2 Hanger Bins 48x84x28" with doors; 1 Hanger Bin, 48x24x24"; 2 Hanger Bins, left, 48x84x24"; 2 Twin Shelf Bins 48"; 2 single Shelf Bin 48x94x24"; 1-3 complete shoe shelf; 24-24x28x35" tables; 1 24x48x33" table.

TO HAVE AND TO HOLD all and singular the above discribed property unto said Mortgagee, his, her, it or their successors, heirs and assigns forever. And the Mortgagors do hereby bind themselves, their successor, assigns, heirs, executors and administrators to warrant and forever defend the title to said property, and every part thereof, unto the said Mortgagee, his, her, it or their successors, heirs and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

THIS CONVEYANCE, HOWEVER, is intended as a mortgage to secure said Mortgagee, his, her, it or their successors heirs and assigns, in the payment of any and all indebtedness due and owing by Mortgagors to Mortgagee, whether the same be evidenced by personal notes, overdrafts, endorsements, guarantees or otherwise, as well as any other indebtedness now due or that may hereafter become due and owing to said Mortgagee, which indebtedness accrued, or hereafter to accrue, it is agreed shall be payable to the Mortgagee or order at Dallas, in Dallas County, Texas, and bear interest at the rate of (3) per cent per annum from date of accrual until paid

and the same shall stand secured by, and payable under this mortgage, and more especially that indebtedness evidenced by one certain promissory note of even date herewith for the principal sum of TWELVE THOUSAND AND NO/100 DOLLARS ($12,000.00), executed by Delbert L. Yazell and wife, Ethel Mae Yazell, d/b/a Yazell's Little Ages, payable to the order of Small Business Administration, an Agency duly created under and by virtue of an Act of Congress, having its principal office in Washington, in the District of Columbia, and a Regional Office at 1114 Commerce Street, Dallas, Texas, principal and interest being payable in monthly installments of One Hundred Twenty and No/100 Dollars ($120.00), each, including interest, one on the 10th day of each month hereafter, commencing on the 10th day of November, 1957, and continuing until the principal and interest are fully paid, except that the final payment of principal and interest, if not been paid, shall be due and payable on the 10th day of June, 1967.

This mortgage is given and received for and upon the representations, agreements, stipulations and conditions made for the purpose of inducing said Mortgagee to part with certain monies, from time to time, and for any other purpose hereinafter set out, and the security herein given is accepted as follows, to wit:

FIRST. That the Mortgagors are the full owners of said property, and have a perfect right to give this first mortgage upon the same, unless a qualified ownership is herein expressly named.

SECOND. That so long as the possession of said property is permitted to remain with Mortgagors the same shall not be sold, mortgaged or moved from the

places above named without the written consent of Mortgagee, (all retail sales made in good faith in the regular course of business from the stock of goods, wares and merchandise, if any, covered hereby pursuant to Article 4000, Revised Civil Statutes of Texas, as amended, sale excepted) and that Mortgagors will use the utmost care and diligence to preserve said property from waste or destruction and to have the same forthcoming for delivery to the Mortgagee, or purchaser, in as good condition as the same now is.

THIRD. That said property is of the reasonable aggregate cash value of TWELVE THOUSAND AND NO/100 ($12,000.00) Dollars, at the execution and delivery hereof, and the Mortgagors, will carry fire, and extended coverage insurance on said property, if insurable, in good and reliable insurance companies to be selected by the Mortgagee, with loss, if any, payable to Mortgagee—which policy shall be kept by Mortgagee.

FOURTH. All of the statements and representations herein made and contained are made for the purpose of inducing the holder of the indebtedness hereby secured to advance the sums of money evidenced by the notes secured hereby and Mortgagors are hereby estopped from claiming any deviation or change therefrom; it being expressly understood that this instrument has been completely read and understood by the Mortgagors, and if not we are hereby bound by the contents hereof on account of failure to acquaint ourselves with such contents.

It is understood and agreed that the mortgage lien hereby created shall extend to any renewals or extension of the indebtedness hereby secured, or any other

indebtednesses, however said renewals or extensions may be evidenced, and this lien shall continue to be in force until all of the liabilities and indebtednesses above referred to, and each and every extention and renewal thereof shall have been fully paid.

It is further understood and agreed that if at any time the said mortgagor should move, or attempt to move, all or any part of the above described property outside of the county where the same is situated (as above stated), or if at any time, in the judgment of said Mortgagee, the said property should be neglected, injured or abandoned or otherwise mistreated or handled so as to impair the said Mortgagee's security or to render said Mortgagee insecure, or if the Mortgagors without the consent of the Mortgagee should surrender possession of any of said property, or sell any part thereof, (all retail sales made in good faith in the regular course of business from the stock of goods, wares and merchandise, if any, covered hereby pursuant to Article 4000, Revised Civil Statutes of Texas, as amended, sale excepted) or if Mortgagors not be full owner of said property or the same be not free from incumbrance (unless otherwise herein stated), or this not be a first lien on said property (unless otherwise herein stated), or if they make default in the payment of said indebtedness, or any part or installment thereof either principal or interest, as the same shall become due and payable, or if the property be taken into the custody of any governmental official, for any purpose, or any receiver, trustee in bankruptcy or assignee for the benefit of creditors or Court, or if the same be not kept in the same repair and condition as it now is, or if all taxes due and to become due thereon be not promptly paid before any penalty under the law at-

taches, or if Mortgagors fail to keep said property insured as herein agreed, or if the Mortgagors should violate any of the other conditions of this mortgage, then, in any of such events, or either of them, the said Mortgagee at the option of him, her, it, or their successors, heirs or assigns, may declare all of the indebtedness above referred to immediately due and payable, and take possession of and sell said property as herein provided.

It is further understood and agreed that in the event default be made by said Mortgagors in the payment of the indebtedness above described, when the same become due and payable or are declared due and payable according to the options herein, then the said Mortgagee shall have the right for himself, herself or itself, or through any agent, to take immediate possession of any or all of said property and to either sell the same at private sale, without notice to said Mortgagors, or sell the same at public sale to the highest bidder in any county or place selected by Mortgagee, first giving ten days notice of the time, place and terms of such public sale by posting written or printed notices of said sale at three public places in said County selected for such sale—one of which shall be posted at the Court House door of said County and one at the place of sale, said sale to be for cash or credit, or for part cash and part credit, as the Mortgagee may elect—at any of which sales it shall not be necessary to have actual possession of said property or to have it present when such sale is made, and the person thus selling said property shall deliver to purchaser thereof a bill of sale therefor binding the Mortgagors, their successors, heirs, assigns executors and administrators forever, or may sell the same in the manner

prescribed by law for sales of personal property under execution at the time of said sale, the proceeds of such sale shall be applied as follows:

FIRST—to the payment of all expenses incident to seizure and sale, including a commission of Ten (10%) per cent to the person selling said property.

SECOND—to the payment of the entire amount then owing on the indebtedness hereby secured, including principal interest and attorney's fees.

THIRD—to the payment of any sum or sums expended by mortgagee under the terms hereof.

FOURTH—any surplus after the payments as above set out shall be paid over to the Mortgagors or order.

Or the said Mortgagee may, if he, she or it elects enforce his, her or its lien by suit in the Court of proper jurisdiction and the Morgagors hereby specially waive all rights of damages and claims, directly or indirectly resulting from any of such repossessions or sales, or by reason of issuance and levy of any statutory writ on or against said property, or any part thereof; and the Mortgagee, his, her or its successors, heirs, assigns or representatives may beome the purchaser of said property at any of said sales. Any holder of the indebtedness hereby secured shall have the right to pay taxes and insurance on the property herein described and in such event such sums so expended shall be secured by this lien on said property and shall bear interest at the rate of Ten (10%) per centum per annum, and all monies collected under any of such insurance policies shall be applied on the indebtedness hereby secured.

It is further understood and agreed that in the event

the indebtednesses secured, or any part thereof, hereby are placed in the hands of an attorney for collection, or if collected by suit through any Court, including the Bankruptcy and Probate Courts, Ten (10%) per cent of the amount of the principal and interest of the indebtedness remaining unpaid shall be added to said indebtedness as attorneys fees for the cost of collection, and in the Probate and Bankruptcy Courts whether the same is matured or not.

It is further understood and agreed that all expense in connection with the securing, taking and caring for any property above described, or placing the same in the same condition as it now is, shall be borne by the Mortgagors and secured by this mortgage.

Upon payment in full of the indebtedness secured by this instrument the same shall be cancelled and released, at the expense of the Mortgagors, and the terms of this mortgage shall inure to the benefit of any holder of the indebtednesses secured hereby.

A bill of sale, hereunder, from the Mortgagee, or any of his, her or its agents, attorneys, successors, heirs; assigns, executors or administrators, acting as such, conveying said property or any part thereof, shall be full and conclusive evidence and proof that all of the terms, conditions and prerequisites required herein have been fully complied with and the said Mortgagors hereby ratify and confirm any and all acts of the Mortgagee, his, her or its agents attorneys, successors, heirs, assigns, executors or administrators, acting as such, done under and by virtue hereof.

The security herein conveyed and given shall not

be affected by nor affect any other security taken for the indebtedness hereby secured, or any part thereof, and any extensions may be made of the indebtedness and this lien and any releases may be executed of the security, or any part thereof, herein conveyed without affecting the priority of this lien or the validity thereof with reference to any third party, and the holders of said indebtedness shall not be confined to any election of remedies if they choose to foreclose this lien by suit. The right to sell under the terms hereunder shall also exist cumulative with said suit and one method shall not bar the others, but both may be exercised at the same or different times, nor shall one be a defense to the other.

WITNESS our hands at Lampasas, Texas, this 10th day of July, 1957.

/s/ Delbert L. Yazell
Delbert L. Yazell

/s/ Ethel Mae Yazell
Ethel Mae Yazell
/d/ba/ Yazell's Little Ages

THE STATE OF TEXAS
COUNTY OF LAMPASAS

BEFORE ME, the undersigned authority, on this day personally appeared DELBERT L. YAZELL, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office, this the 18 day of July, A.D. 1957.

/s/ Katharine Shands
Notary Public Lampasas
County, Texas

THE STATE OF TEXAS
COUNTY OF LAMPASAS

BEFORE me, the undersigned authority, on this day personally appeared ETHEL MAE YAZELL, wife of DELBERT L. YAZELL, known to me to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said ETHEL MAE YAZELL, acknowledged such instrument to be her act and deed and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

GIVEN under my hand and seal of office, this the 18 day of July, A.D. 1957.

/s/ Katharine Shands
Notary Public Lampasas
County, Texas
Lampasas, Texas

Received from Small Business Administration Chattel Mortgage of which this is a copy, this day filed for registration in my office.

County Clerk Lampasas
County, Texas
By ..... Deputy.

For value received, the undersigned hereby sells and assigns unto

the indebtedness described in the within chattel mortgage and all of undersigned's right, title and interest in and to said chattel mortgage and the property covered thereby, and hereby authorizes said party to collect said debt and release said mortgage.

Executed this ..... day of ....., 19.....

WITNESSES:

.....

.....

.....

"EXHIBIT B"

ITEMS SOLD AT SUMMARY SALE ON AUG. 27, 1962

Item	Amount	Purchaser	Address
17 Wood Sectional wall cases	$70.00	Stanley Weiss	Killeen,Texas
1 Hat bar section w/mirror	2.00		
1 3 way mirror section	5.00		
2 Glass show cases	40.00		
10 Merchandise tables	60.00		
2 Wood straight chairs; shoe fitting stool & shoe mirror	4.00		
1 Sturges cash register	17.00		
1 Remington Adding machine	27.00		
1 Lot T stands & display fixtures	20.00		
1 Lot plastic hangers	10.00		
2 Glass merchandise sections	7.50	Leonard Rawlings	Lampasas, Texas
10 Merchandise tables	60.00		
2 Display tables	2.00		
2 Wrapping counters	15.00		

2 Merchandise counters	16.50		
1 Merchandise table with drawers	26.00		
4 Merchandise tables	24.00	Russell Miller	Lampasas, Texas
4 Mannequins	25.00		
4 Chrome dress & skirt racks	25.00	R. E. Brauer	Lampasas, Texas
1 Chrome settee	9.00		
4 Display tables	8.00	Mrs. Glynn Parkins	Lampasas, Texas
1 Metal file cabinet	18.00		
1 Desk	1.00		
1 Jewelry display case	.25		
TOTAL	$492.25		

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA Plaintiff	)	
v.	)	CIVIL ACTION
Delbert L. Yazell, d/b/a YAZELL'S LITTLE AGES, and Ethel Mae Yazell Defendant	)	FILE NO. 1319

AFFIDAVIT OF L. W. MASSETT
IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT

In support of Plaintiff's Motion for Summary Judgment heretofore filed in this cause, the undersigned Affiant states on his oath:

1. My name is L. W. Massett, I am Chief of the Loan Liquidation Section, Financial Assistance Division, Region X, Small Business Administration, 1025 Elm Street, Dallas, Texas. In this capacity I am charged with the responsibility for supervising all Region X loan liquidation cases, including specifically the liquidatiion of and realization on all collateral mortgaged to secure the indebtedness evidenced by the Note alleged in paragraph 3 of the Complaint filed in this cause.

2. I am over 21 years of age, am of sound mind, have never been convicted of any crime or offense and

have personal knowledge of every statement herein made and am fully competent to testify to the matters stated herein.

3. Except for the activities of Employee Charles Motz, as related hereinafter, no agent or employee of the Small Business Administration ever been authorized to agree to take possession of any of the property of the Defendant for sale nor has any agent or employee ever taken possession of any of Defendant's property nor made any sale thereof.

4. All property covered by the mortgage named in paragraph 4 to Plaintiff's Motion for Summary Judgment, excepting only that personal property specifically enumerated in Exhibit B to Plaintiff's Motion was sold by Defendants with the consent of Small Business Administration. All funds received from such sales were by Cashier's checks made payable joinly to Defendant Delbert L. Yazell and Small Business Administration, and were tendered to Small Business Administration by Delbert L. Yazell after having first been endorsed by him. At no time did any employee or agent of Small Business Administration ever take possession of any of such merchandise. Delivery of all such merchandise to purchasers were made directly by Mr. Yazell.

5. The remaining items of furniture, fixtures, and machinery, as itemized in Exhibit B, annexed to Plaintiff's Motion for Summary Judgment which were not sold by Mr. Yazell, were sold by foreclosure sale by Charles Motz, a regular employee of Small Business Administration on the premises of Defendant's in Lampasas, Texas on August 27, 1962, at public auction for cash to the highest bidder. Every detail in connection with the said

foreclosure sale was in strict compliance with the instrument of mortgage and in accordance with all laws relating thereto.

6. All proceeds of the aforesaid sales by Defendants and all proceeds recived from the foreclosure sale have been credited to the indebtedness of Defendants prior to filing of the Complaint herein.

/s/ L. W. MASSETT

Sworn to and subscribed before me by L. W. Massett, the said Affiant on this 16th day of January 1963.

/s/ Eddie Mae Britton
Notary Public in and for Dallas County, Texas

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA Plaintiff	)	
VS.		CIVIL ACTION
DELBERT L. YAZELL, d/b/a/ YAZELL'S LITTLE AGES, and ETHEL MAE YAZELL Defendant	)	FILE NO. 1319

STATEMENT MOTION FOR A MORE DEFINITE

Comes now Plaintiff, UNITED STATES OF AMERICA, and subject to its Motion for Summary Judgment heretofore filed, and in the alternative to said Motion for Summary Judgment, and only in the event the aforesaid Motion for Summary Judgment should not be fully granted, and would show the Court that all of the allegations of paragraph IV of Defendant's Original Answer, are so vague and ambiguous that Plaintiff cannot be reasonably required to frame a responsive pleading thereto nor prepare for trial of any issue which might be raised by said pleading.

WHEREFORE, Plaintiff prays that an order be entered requiring Defendants, within ten days after notice of entry thereof, to plead fully in detail the full name of any representative of Plaintiff with whom he made any agreement, or whom he claims informed him that Plaintiff would handle the sale of any of his property, the dates on which such agreements or representations were

made; the details of the substance of such agreements or representations; whether or not they were written or oral; an itemized and detailed description of every piece of personal property which Defendants claim Plaintiff agreed to take possesion of; an itemized and detailed list of every item of personal property which Defendant claims Plaintiff did take possesion of, both of which descriptive lists shall be in sufficient detail so that identification of the property may be made therefrom; the source from which Defendants purchased such property; the dates on which it was purchased; the cost price in cash paid for such property; the dates on which Defendant claims Plaintiff's representative took possesion of such property; details of the manner and circumstances in which Defendants claim possession was given to Plaintiff's representative; the names of any purchasers to whom Defendants claim Plaintiff sold any of Defendant's property; and an itemized allegation of the specific act of any representative of Plaintiff which Defendant claims to be negligent, including the time and place of the alleged commission of said act.

/s/ Ernest Morgan

UNITED STATES ATTORNEY
P. O. BOX 1701
SAN ANTONIO

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA Plaintiff	)	
VS.		CIVIL ACTION
Delbert L. Yazell, d/b/a YAZELL'S LITTLE AGES, and Ethel Mae Yazell Defendants	)	FILE NO. 1319

HEARING ORDER AND NOTICE OF

ORDER

The Motion for Summary Judgment by Defendant, Ethel Mae Yazell, is set for hearing in the United States District Court Room in Austin, Texas, on the 28th day of January, 1963 at 9:00 O'Clock A. M.

/s/ Ben H. Rice Jr.
Judge

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing response to Motion for Summary Judgment by Ethel Mae Yazell, a true copy of the Affidavit of James R. Woodall in opposition to said Motion, and the foregoing order setting time and place for hearing thereon, has been delivered to the Honorable J. V. Hammett, attorney of record for Defendant Ethel Mae Yazell by depositing them in the United States mail at San Antonio, Texas on the 17th day of January 1963 properly addressed to him at P. O. Box 111, Lampasas, Texas.

/s/ William O. Murray, Jr.
Asst. U. S. Attorney

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA Plaintiff	)	
VS.		CIVIL ACTION
Delbert L. Yazell, d/b/a YAZELL'S LITTLE AGES, and Ethel Mae Yazell	)	FILE NO. 1319
Defendants	)	

HEARING ORDER AND NOTICE OF

ORDER

Plaintiff's Motion for Judgment on the Pleadings and for Summary Judgment is set for hearing in the United States District Court Room in Austin, Texas, on the 28th day of January, 1963 at 9:00 O'Clock A. M.

/s/ Ben H. Rice Jr.
Judge

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Plaintiff's Motion for Judgment on the Pleadings and for Summary Judgment, and the foregoing order setting time and place for hearing thereon, has been delivered to the Honorable J. V. Hammett, attorney of record for Defendant Ethel Mae Yazell by depositing them in the United States mail at San Antonio, Texas, on the 17th day of January 1963 properly addressed to him at P. O. Box 111, Lampasas, Texas.

/s/ William O. Murray, Jr.
Asst. U. S. Attorney

WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION
UNITED STATES DISTRICT COURT
FOR THE

UNITED STATES OF AMERICA Plaintiff	)	
VS.		CIVIL ACTION
DELBERT L. YAZELL, d/b/a/ YAZELL'S LITTLE AGES, and ETHEL MAE YAZELL Defendant	)	FILE NO. 1319

REPLY OF DEFENDANT ETHEL MAE YAZELL TO PLAINTIFF'S OPPOSITION TO HER MOTION FOR SUMMARY JUDGMENT

Now comes the defendant ETHEL MAE YAZELL and respectfully replies to plaintiff's opposition to her motion for summary judgment and respectfully shows:

1. The affidavit of James R. Woodall in opposition to this defendant's motion for summary judgment is insufficient as a matter of law to show that this defendant's motion for summary judgment should not be granted in that the same does not deny nor contest any of the facts or showing upon which this defendant's motion for summary judgment is predicated, and does not show any cause of action against this defendant other than a suit for a community debt with respect to community property, for none of which this defendant or her separate property and estate is personally liable.

2. As additional support for her motion for summary judgment, an affidavit of this defendant of further

facts is attached hereto and made a part hereof for all purposes.

WHEREFORE, this defendant prays that her motion for summary judgment heretofore filed herein be granted.

/s/ J. V. Hammett
J. V. Hammett

P. O. Box 111
Lampasas, Texas
Attorneys for Defendants

THE STATE OF TEXAS)
COUNTY OF LAMPASAS)

ETHEL MAE YAZELL, being duly sworn, states that she is one of the defendants in the above entitled action; that she makes this affidavit in support of her opposition to plaintiff's motion for judgment on the pleadings and/or summary judgment against her; that she has personal knowledge of the facts stated herein; that she is over twenty-one years of age, of sound mind, has never been convicted of any crime or offense, and is fully competent to testify to the matters stated herein.

Affiant states that all of the facts stated in her affidavit of December 8, 1962 and attached to her motion for summary judgment in this cause are true and correct.

Additionally thereto, affiant further states that the debt sued upon by plaintiff in this cause is, under the laws of the State of Texas, a community property debt of the marriage between affiant and defendant Delbert

L. Yazell, and that all of the property covered by the mortgage referred to in and attached to plaintiff's motion for judgment on the pleadings and/or for summary judgment was property belong solely to the community estate of affiant and defendant Delbert L. Yazell, i.e. same was acquired by purchase after their marriage and was not acquired by either her or defendant Delbert L. Yazell by gift, devise or descent and was not owned by her prior to her marriage with defendant.

/s/ Ethel Mae Yazell

Sworn to and subscribed by Ethel Mae Yazell before me the undersigned authority, a notary public in and for Lampasas County, Texas, on this 26th day of January, 1963, to which witness my hand and seal of office.
My commision expires:
June 1, 1963.

/s/ Katharine Shands
Notary Public, Lampasas County, Texas.

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STAES OF AMERICA	)	
Plaintiff	)	
VS.		CIVIL ACTION
DELBERT L. YAZELL, d/b/a/	)	
YAZELL'S LITTLE AGES, and	)	FILE NO. 1319
ETHEL MAE YAZELL	)	
Defendant	)	

DEFENDANT'S OPPOSITION TO PLANTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS AND/OR FOR SUMMARY JUDGMENT

TO SAID HONORABLE COURT:

Now comes DELBERT L. YAZELL, dba YAZELL'S LITTLE AGES and ETHEL MAE YAZELL, defendants in the above styled cause and file this opposition to plaintiff's motion for judgment on the pleadings and/or for summary judgment, for all relief sought by plaintiff in its complaint herein, and would respectfully show:

1. Plaintiff is not in any event entitled to a personal judgment against defendant Ethel Mae Yazell, nor is it entitled to any kind of judgment that might affect the separate property and estate of the said Ethel Mae Yazell, whether now owned or hereafter acquired. Further in this connection defendant Ethel Mae Yazell shows that she is neither an indispensible, necessary nor proper party to plaintiff's suit for debt or foreclosure against defendant Delbert L. Yazell.

2. Plaintiff is entitled to a judgment for its debt against Delbert L. Yazell dba Yazell's Little Ages, as demanded in plaintiff's complaint herein, but it is not entitled to any judgment on the pleadings or by way of summary judgment on the setoff alleged by defendant against any recovery of the plaintiff, as alleged by paragraph IV of said defendant's original answer herein.

3. Defendants deny the allegation in paragraph 5. of plaintiff's motion on the pleadings and/or summary judgment, i.e. that all of the property covered by the mortgage in question was sold by defendants with the consent of Small Business Administration, but instead defendant would show that Small Business Administration sold all of the merchandise as well as the furniture, fixtures and machinery referred to in such paragraph of plaintiff's motion.

4. The showing of plaintiff in support of its motion on the pleadings and/or summary judgment is insufficient in that it does not show the absence of genuine issue as to material facts against either defendant as to defendants alleged right of set off against plaintiff's recovery against defendant Delbert L. Yazell.

5. This opposition is supported by defendant's original answer, by the motion of defendant Ethel Mae Yazell for summary judgment and the affidavit affixed thereto, as well as by the affidavits of each defendant affixed to this opposition, all of which are hereby fully incorporated by reference herein and made a part hereof.

WHEREFORE defendants pray that plaintiff's motion for judgment on the pleadings and/or for summary judgment be in all things denied excepting only as

to plaintiff's right for judgment for debt against the defendant Delbert L. Yazell.

/s/ J. V. Hammett
J. V. Hammett
P. O. Box 111
Lampasas, Texas
Attorney for Defendants

THE STATE OF TEXAS)
COUNTY OF LAMPASAS)

ETHEL MAE YAZELL, being duly sworn, states that she is one of the defedants in the above entitled action; that she makes this affidavit in support of her opposition to plaintiff's motion for judgment on the pleadings and/or summary judgment against her; that she has personal knowledge of the facts stated herein; that she is over twenty-one years of age, of sound mind, has never been convicted of any crime or offense, and is fully competent to testify to the matters stated herein.

Affiant states that all of the facts stated in her affidavit of December 8, 1962 and attached to her motion for summary judgment in this cause are true and correct.

Additionally thereto, affiant further states that the debt sued upon by plaintiff in this cause is, under laws of the State of Texas, a community property debt of the marriage between affiant and defendant Delbert L. Yazell, and that all of the property covered by the mortgage referred to in and attached to plaintiff's motion for judgment on the pleading and/or for summary judgment was property belonging solely to the community estate

of affiant and defendant Delbert L. Yazell, i.e. same was acquired by purchase after their marriage and was not acquired by either her or defendant Delbert L. Yazell by gift, devise or descent and was not owned by her prior to her marriage with said defendant.

/s/ Ethel Mae Yazell

Sworn to and subscribed by Ethel Mae Yazell before me the undersigned authority, a notary public in and for Lampasas County, Texas, on this 26th day of January, 1963, to which witness my hand seal of office.

/s/ Katharine Shands
Notary Public, Lampasas County, Texas.
My commission expires:
June 1, 1963.

THE STATE OF TEXAS)
COUNTY OF LAMPASAS)

DELBERT L. YAZELL, being duly sworn, states that he is one of the defendants in the above entitled action; that he makes this affidavit in support of his opposition to plaintiff's motion for judgment on the pleadings and/or summary judgment against him; that he has personal knowledge of the facts stated herein; that he is over twenty-one (21) years of age, of sound mind, has never been convicted of any crime or offense and is fully competent to testify to the matters stated herein.

1. Affiant Delbert L. Yazell states upon oath that he has read the affidavit of his wife Ethel Mae Yazell dated December 8, 1962 and attached to her motion for summary judgment in this cause, and also the affidavit made by her this date and attached to this opposition to plaintiff's motion for judgment on the pleadings and/or for summary judgment, and hereby states that each and every fact and statement contained in each and both of said affidavits of Ethel Mae Yazell are true and correct.

2. This affiant states further upon oath that he could not pay his debts in July 1962 and that in addition to the debt and mortgage due Small Business Administration, as alleged by plaintiff, he was at such time indebted in divers amounts to more than twenty different firms for merchandise sold and delivered to the store operated by this defendant under the name of Yazell's Little Ages at Lampasas, Texas; that he so advised a Mr. Flynn who was a representative of Small Business Administration and that Mr. Flynn was familiar with all such facts at such time; that he composed and settled all of his debts with all of such general creditors at ten cents on the dollar, using funds that he borrowed from his brother for such purpose; that he had then and prior thereto advised Small Business Administration that he could not pay but that all of the merchandise, furniture and fixtures in such store then had a reasonable market value in excess of TWELVE THOUSAND DOLLARS ($12,000.00), which was more than sufficient to pay Small Business Administration in full; that he offered to sell such merchandise and fixtures or would turn the same over to Small Business Administration to sell and liquidate such debt; that he was advised by representatives of Small Buiness Ad-

ministration by mail, in person and by telephone that he should not sell the same but that Small Business Administration would do so. Such representatives of Small Business Administration further advised him that they had outlets and sources for such property that enabled them to sell the same to better advantage than this defendant, and this defendant was perfectly willing for them to do so.

Small Business Administration procured a man from Houston, whose name is not recalled by affiant, to purchase all merchandise in the store, that the man from Houston came to the store and advised affiant that he had bought such merchandise from Small Business Administration; affiant did not deliver such merchandise to the man from Houston but did then telephone Small Business Administration and affiant is not certain at this time as to the identity of the persons he talked with. Such representative advised him in such telephone conversation to deliver the merchandise to the man from Houston, to accept his cashier's check for ONE THOUSAND DOLLARS ($1,000.00), to endorse the same and mail it to Small Business Administration, all of which affiant did, notwithstanding that such merchandise had a cash market value in excess of FIVE THOUSAND D O L L A R S ($5,000.00).

Thereafter, a representative of Small Business Administration did hold a foreclosure sale and sell thereat the furniture and fixtures listed by plaintiff, but at the time of such sale and prior thereto the representative conducting such sale, by name of Charles Motz, advised this affiant that he did not intend to sell the same for nothing. Nevertheless and without prior knowledge or

consent of this defendant, he did sell the same for nothing, i.e. for less than ten (10%) percent of the fair cash value thereof.

This affiant states further that at the time of such foreclosure sale he asked Mr. Motz if he, the defendant, should not have his attorney present, to which Mr. Motz replied to the effect that the attorney had been advised thereof and implied that defendant did not need his attorney.

3. Affiant states furthur that he cooperated fully and in every way with Small Business Administration representatives with respect to the liquidation of such store but affiant states further that he did so solely upon the representations of Mr. Flynn, Mr. Motz and other representatives of Small Business Administration whose names are not now recalled, to affiant to the effect that they could make a more advantageous disposition of all such property than could this affiant, and that in any event the debt upon which plaintiff now sues could be liquidated thereby.

/s/ Delbert L. Yazell

Sworn to and subscribed by Delbert L. Yazell before me the undersigned authority, a notary public in and for Lampasas County, Texas, on this 26th day of January, 1963, to which witness my hand and seal of office.

/s/ Katharine Shands
Notary Public, Lampasas County, Tex.

My commission expires:
June 1, 1963.

UNITED STATES DISTRICT COURT

FOR THE

WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

UNITED STATES OF AMERICA)	
PLAINTIFF)	
VS	CIVIL ACTION
DELBERT L. YAZELL, d/b/a/)	
YAZELL'S LITTLE AGES, AND)	FILE NO. 1319
ETHEL MAE YAZELL)	
DEFENDANT)	

DEFENDANTS' FIRST AMENDED

ORIGINAL ANSWER
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA)	
PLAINTIFF)	
VS	CIVIL ACTION
DELBERT L. YAZELL, d/b/a/)	
YAZELL'S LITTLE AGES, AND)	FILE NO. 1319
ETHEL MAE YAZELL)	
DEFENDANT)	

DEFENDANTS' FIRST AMENDED ORIGINAL ANSWER

TO SAID HONORABLE COURT:

Comes now DELBERT L. YAZELL, d/b/a/ YAZELL'S LITTLE AGES, and ETHEL MAE YAZELL, defendants, and file this their first amended original answer to plaintiff's complaint, and thereby show:

I

Defendants admit the allegations contained in Paragraphs 1, 2 and 3 of the complaint.

II

Defendants severally say, each for himself, that he has no knowledge or information sufficient to form a belief as to the truth of any of the allegations of Paragraph 4 of the complaint.

III

Defendant Ethel Mae Yazell was a married woman on the date and at the time she signed the note made the

basis of plaintiff's suit herein. Prior thereto, at all times since and now, she was and is married, at all of said pertinent times being married to Delbert L. Yazell. Her disabilities of converture have never been removed. The promises and undertakings made the basis of plaintiff's suit were not for necessaries, were not made for the benefit of any separate property of defendant Ethel Mae Yazell, nor were the same incurred in the management, control and disposition of any separate property belonging to her. She signed the note, made the basis of plaintiff's suit solely as security for her husband and she did not have legal capacity to bind herself or her separate property by any such promises, contracts or undertakings made the basis of plaintiff's suit herein.

Plaintiff, its agents and representatives, knew and had actual knowledge of such converture at all times pertinent to the events and transactions made the basis of plaintiff's suit.

Defendant Ethel Mae Yazell hereby pleads and asserts her converture in bar of plaintiff's alleged cause of action against her.

IV

Defendant Delbert L. Yazell alleges that he is entitled to offset any recovery by plaintiff to the extent of any such recovery by reason of the following:

(1) The debt asserted by plaintiff is a community debt of defendants Delbert L. Yazell and wife Ethel Mae Yazell, and the chattel mortgage given by them to plaintiff to secure payment thereof covered community property of said marriage.

(2) The note sued upon was secured by a chattel

mortgage executed by him and his wife covering furniture, fixtures and equipment, together with merchandise in the store at Lampasas heretofore operated by him under the business name of Yazell's Little Ages. He could not pay his debts in July 1962 at which time he was indebted to Small Business Administration upon the debt forming the basis of plaintiff's suit herein which debt was secured, and to other persons who were not secured for merchandise and supplies sold and delivered to the store, Yazell's Little Ages. Being unable to pay his debts, this defendant composed and settled all of his general creditor obligations for twenty cents on the dollar, using funds that he borrowed from his brother for such purpose.

(3) Said defendant advised a representative of Small Business Administration, to-wit, Mr. Flynn, of the situation and offered to sell such merchandise and fixtures on which plaintiff held a chattel mortgage, to liquidate the same and such debt.

(4) Said defendant was advised by representatives of Small Business Administration in person and by telephone that they, not he, would sell the same because they had outlets and sources for such property that enabled them to sell the same to better advantage than defendant could do.

(5) Small Business Administration procured a purchaser for the merchandise from Houston, Texas, who called at defendant's store in Lampasas for the purpose of, and he did inspect the merchandise in the store. Defendant was advised by such purchaser that he had bought the merchandise from Small Business Administration. Not having been advised thereof by Small Busi-

ness Administration, this defendant refused to deliver such merchandise to such purchaser, but instead called by telephone the Small Business Administration office in Dallas, Texas, in regard thereto. This defendant was then instructed by the representative of Small Business Administration with whom he talked to deliver all the merchandise to the Houston purchaser, to accept the purchaser's check for ONE THOUSAND DOLLARS ($1,000.00), to endorse the same and mail it to Small Business Administration. Defendant did as instructed, notwithstanding that the merchandise had a cash market value greatly in excess of ONE THOUSAND DOLLARS ($1,000.00).

(6) Thereafter, a representative of Small Business Administration held a foreclosure sale at the store in Lampasas and sold thereat the furniture and fixtures, which are listed by plaintiff, for less than 10% of the fair cash market value thereof, notwithstanding that the representative, Charles Motz, had theretofore informed this defendant that he did not intend to sell such property for nothing ; and this defendant had no prior knowledge of nor did he consent to the sale of such property on such occasion for the prices at which the same were sold by Mr. Motz. Defendants' attorney was not present at such sale and in answer to a question by defendant, Mr. Motz implied that defendant did not need his attorney.

(7) The above described property had a fair cash market value of TWELVE THOUSAND DOLLARS ($12,000.00) or more at the time of sale thereof by Small Business Administration, and this defendant would not have turned the same over to Small Business Administration for liquidation except for the representations made

to him by representatives of Small Business Administration that they had outlets and sources for such property for sale thereof to better advantage than this defendant could have realized by selling such property himself.

(8) All of such property sold by Small Business Administration as aforesaid should, and by the exercise of ordinary care would have been sold for an amount of money sufficient to discharge this defendants' debt to plaintiff, and by reason thereof any recovery by plaintiff against this defendant upon the note sued upon should be offset against the amount of plaintiff's recovery, as damages for the negligent and indifferent sales of the property by plaintiff as aforesaid for wholly inadequate prices.

(9) Names of all of the representatives of Small Business Administration with whom this defendant has been in contact or who have participated in the matters referred to herein, dates of occurence of events alleged, as well as the names and identity of the various purchases of the property and the amounts paid by them are all matters within the knowledge of plaintiff, and except as stated herein this defendant does not have exact knowledge thereof.

WHEREFORE, having fully answered plaintiff's complaint herein, defendants pray that plaintiff take nothing by its suit against either defendant, and defendant Ethel Mae Yazell specially prays that her defense of coverture be sustained, that she be dismissed from the suit; and in any event that plaintiff take nothing by reason of its suit against her and that no personal judgment be rendered against her; that any recovery by plaintiff

be offset by the damages of defendant; that each and both defendants go hence without day and recover their costs herein.

/s/ J. V. Hammett
P. O. Box 111
Lampasas, Texas
Attorneys for Defendants

CERTIFICATE

I hereby certify that a copy of the foregoing first amended original answer of defendants has been mailed to Ernest Morgan, United States Attorney, San Antonio, Texas, attorney of record for plaintiff, properly addressed to him at P. O. Box 1701, San Antonio 6, Texas, on the 5th day of February, 1963.

/s/ J. V. Hammett
Attorney for Defendants.

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA	)	
VS.	)	CIVIL NO. 1319
DELBERT L. YAZELL, d/b/a YAZELL'S LITTLE AGES, and ETHEL MAE YAZELL	)	ORDER

On the 28th day of January 1963 came on to be heard the motion of defendant Ethel Mae Yazell for summary judgment, the motion of plaintiff the United States of America for judgment on the pleadings and for summary judgment and the motion of plaintiff for a more definite statement. Harry Lee Hudspeth, Assistant United States Attorney, for the Western District of Texas appeared for and in behalf of the United States of America and the Honorable J. V. Hammett appeared for and in behalf of defendants Delbert L. Yazell and Ethel Mae Yazell. After considering the pleadings and arguments of counsel, it appears to the Court that the following Order should be entered.

It is, therefore, ORDERED that plaintiff's motion for judgment on the pleadings and for summary judgment in all things be granted as to defendant Delbert L. Yazell, with the exception of that matter relating to the execution of a set-off as alleged in Paragraph IV of defendant's original answer which should be decided only after further pleadings as hereinafter ordered and a hearing on the merits.

It is further ORDERED that judgment on the issue related to the defense of coveture as set out in the motion

for summary judgment by defendant Ethel Mae Yazell is deferred until such time as counsel for plaintiff and defendant can submit briefs to the Court, as provided herein. Defendant shall have ten days from January 28th, 1963 in which to submit a brief in support of his motion for summary judgment. Plaintiff shall have ten days after receipt of defendant's brief to reply thereto. Defendant shall have five days after receipt of plaintiff's reply brief in which to file further brief should he wish to do so.

It is therefore ORDERED that plaintiff's motion for a more definite statement is in all things granted and the defendant, Delbert L. Yazell is ordered to plead within 10 days from January 28th, 1963 in detail all matters for which prayer is made by plaintiff in its motion for a more definite statement.

SIGNED this the 7 day of February, 1963.

/s/ Ben H. Rice, Jr.
Ben H. Rice, Jr.
UNITED STATES DISTRICT JUDGE

APPROVED:
/s/ William O. Murray, Jr.
William O. Murray, Jr.
Assistant United States Attorney

/s/ J. V. Hammett
J. V. Hammett
Attorney for Defendant
Ethel Mae Yazell

ENTERED: Civil 5 Page 405

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA Plaintiff	)	
VS.		CIVIL ACTION
DELBERT L. YAZELL, d/b/a/ YAZELL'S LITTLE AGES, and ETHEL MAE YAZELL Defendant	)	FILE NO. 1319

MOTION TO STRIKE PARAGRAPH IV OF DEFENDANT'S FIRST AMENDED ORIGINAL ANSWER; AND, PLAINTIFF'S RENEWED MOTION FOR JUDGMENT ON THE PLEADINGS AND FOR SUMMARY JUDGMENT

Now comes Plaintiff, United States, and moves the Court to strike all of paragraph IV of Defendant's First Amended Original Answer and renews its Motion for Judgment on the Pleadings and for Summary Judgment. In support of the foregoing Motions, Plaintiff would show the Court:

1. Defendant's First Amended Original Answer, which was filed in response to an order handed down by this Honorable Court, after hearing on Plaintiff's Motion for a more Definite Statement from Defendant, wholly fails to comply with the said order of this Court, and fails to plead in a clear and concise manner the following essential information as specifically requested by Plaintiff and as specifically ordered by the Court:

(1) Defendant wholly fails to inform Plaintiff as to the names of any representatives of this agency, whom he claimed informed him that Plaintiff would handle the sale of his property.

(2) No dates are given on which such alleged agreements or representations are claimed to have been made.

(3) No details of the substance of any such agreements or representations are alleged.

(4) There is absolutely no description of said merchandise, and more particularly such a description as ordered by the Court, i.e., an itemized and detailed description of every piece of personal property which claims Plaintiff agreed to take possession of, or did take possession of, which descriptive list shall be in sufficient detail so that identification of the property can be made therefrom.

(5) Defendant wholly fails to provide any source from which he purchased or obtained this property, the date it was purchased, or the cost price thereof.

(6) No names of any purchasers to whom defendant claims Plaintiff sold any of defendant's property are alleged.

(7) No name of any employee or representative of Plaintiff whom Defendant claims to have been negligent is alleged.

(8) No specific act of negligence on the part of any representative of Plaintiff is alleged, nor, is there set out the time, place, or circumstances of any action claimed to be negligent.

2. The allegations of Defendant in his said First Amended Original Answer to the effect that the names of the representatives of Small Business Administration who participated in the matters referred to therein, the dates of occurrence of alleged events, as well as the names and identities of various purchasers of the property are matters within the knowledge of Plaintiff, and that Defendant does not have exact knowledge thereof, are a sham, and an obvious attempt to wrongfully shift the burden of proof from defendant to Plaintiff concerning a matter in the nature of an affirmative defense. The burden of both allegation and proof of these matters rests squarely on the Defendant. Plaintiff denies knowledge of the occurrences as alleged by Defendant, and, to the contrary alleges, as hereinafter specifically set out, that Defendant's claims are not true. In this connection, Plaintiff incorporates fully by reference herein all of the allegations of its Motion for Judgment On The Pleadings, and For Summary Judgment, heretofore filed herein, and the Affidavit of L. W. Massett attached thereto, and again asserts all allegations contained therein, including, but not limited to, specifically, the following:

(1) Except for the activities of Employee Charles Motz, as related hereinafter, no agent or employee of the Small Business Administration ever been authorized to agree to take possession of any of the property of the Defendant for sale nor has any agent or employee ever taken possession of any of Defendant's property nor made any sale thereof.

(2) All property covered by the mortgage named in paragraph 4 to Plaintiff's Motion for Summary Judgment, excepting only that personal property specifically

enumerated in Exhibit B to Plaintiff's Motion was sold by Defendants with the consent of Small Business Administration. All funds received from such sales were by Cashier's checks made payable jointly to Defendant Delbert L. Yazell and Small Business Administration, and were tendered to Small Business Administration by Delbert L. Yazell after having first been endorsed by him. At no time did any employee or agent of Small Administration ever take possession of any of such merchandise. Delivery of all such merchandise to purchasers were made directly by Mr. Yazell.

(3) The remaining items of furniture, fixtures, and machinery, as itemized in Exhibit B, annexed to Plaintiff's Motion for Summary Judgment which were not sold by Mr. Yazell, were sold by foreclosure sale by Charles Motz, a regular employee of Small Business Administration on the premises of Defendant's in Lampasas, Texas on August 27, 1962, at public auction for cash to the highest bidder. Every detail in connection with the said foreclosure sale was in strict compliance with the instrument of mortgage and in accordance with all laws relating thereto.

(4) All proceeds of the aforesaid sales by Defendants and all proceeds received from the foreclosure sale have been credited to the indebtedness of Defendants prior to filing of the Complaint herein.

3. As further grounds for relief in this case, Plaintiff alleges that because of Defendant's failure to plead

with particularity and to state any cause of action on which an affirmative defense can be predicated, as ordered by this Court, and because all other issues raised by the complaint, with the exception of the defense of coverture asserted by Mrs. Yazell, submitted but not decided, have been resolved in favor of Plaintiff, as evidenced by an order of the Court entered herein, Plaintiff is entitled to Judgment on the pleadings and/or summary judgment against Defesdants Delbert L. Yazell and Ethel Mae Yazell; and, by these pleadings do here and now renew its Motion For Judgment On The Pleadings and for Summary Judgment together with the affidavit of L. W. Massett in support thereof, as heretofore filed in this cause, and heretofore served on Defendant, all of which are incorporated herein by reference as fully as though alleged verbatim herein.

WHEREFORE, Plaintiff prays that after hearing herein all allegations of paragraph IV of Defendant's First Amended Original Answer filed herein be stricken; and, that judgment on the pleadings and/or summary judgment be rendered in favor of plaintiff for all relief sought in the compliant filed herein.

/s/ Ernest Morgan
UNITED STATES ATTORNEY
P. O. BOX 1701
SAN ANTONIO, TEXAS

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Plaintiff's motion to strike portions of Defendant's First Amended Original Answer, and Plaintiff's renewed Motion for Judgment on the Pleadings and for Summary Judgment, has been delivered to the Honorable J. V. Hammett, attorney of record for Defendants, Delbert L. Yazell, d/b/a Yazell's Little Ages, and Ethel Mae Yazell, by depositing them in the United States mail at San Antonio, Texas on the 5th day of April, 1963, properly addressed to him at P. O. Box 111, Lampasas, Texas.

/s/ William O. Murray, Jr.
William O. Murray, Jr.
First Assistant U. S. Attorney

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA Plaintiff	)	
v.	)	CIVIL ACTION
Delbert L. Yazell, d/b/a YAZELL'S LITTLE AGES, and Ethel Mae Yazell	)	NO. 1319
Defendant	)	

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT OF DEFENDANT ETHEL MAE YAZELL

Came on to be considered the motion for summary judgment filed here in by the defendant, Ethel Mae Yazell, and the Court having considered said motion and the briefs of the parties thereon, is of the opinion that said defendant's plea of coverture herein should be sustained and that judgment should be entered in favor of the said Mae Yazell.

IT IS, THEREFORE ORDERED that Ethel Mae Yazell's motion for summary judgment herein be, and the same is hereby, granted.

It is further ORDERED by the Court that the plea of set-off filed by Delbert L. Yazell be in all things stricken and that the United States is entitled to recover its Judgment against the said Delbert L. Yazzell for the

amount sued for; plaintiff's attorneys are requested to submit appropriate Judgment to this Court, that is take nothing against Ethel Mae Yazell, and recover in full on its claim against Delbert L. Yazell, furnishing copy thereof to defendants' attorney.

Done this 6th day of August, 1963.

/s/ Ben H. Rice Jr.
United States District Judge
ENTERED: Civil 5 Page 634

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA	)	
VS.	)	CIVIL ACTION
DELBERT L. YAZELL, d/b/a	)	
YAZELL's LITTLE AGES, and	)	NO. 1319
ETHEL MAE YAZELL	)	

ORDER

On the 10th day of June 1963 came on to be heard the motion of Plaintiff, United States of America to strike Paragragraph IV of Defendant's First Amended Original Answer; and Plaintiff's renewed motion for judgment on the pleadings and for summary judgment. William O. Murray, Jr., Assistant United States Attorney appeared for and in behalf of the United States, and the Honorable J. V. Hammett, appeared for and in behalf of Defendants Delbert L. Yazell and Ethel Mae Yazell. After considering the pleadings and arguments of counsel relating to the motion to strike Paragraph IV of Defendant's First Amended Original Answer, it appears to the court that the following order should be entered.

IT IS, THEREFORE, ORDERED that Plaintiff's motion to strike paragraph IV of Defendant's First Amended Original Answer is granted and said paragraph IV of defendant's first amended Original Answer shall no longer constitute a part of the pleadings of this cause.

In view of the foregoing order of the court no presentation was made and no action was taken in connection with either Plaintiff's or Defendant's motion for summary Judgment.

ENTERED this 12 day of August, 1963

/s/ Ben H. Rice Jr.
UNITED STATES DISTRICT JUDGE

APPROVED:

/s/ Harry Lee Hudspeth
Assistant United States Attorney

/s/ J. V. Hammett
Attorney for Defendants
Delbert L. Yazell and Ethel Mae Yazell

ENTERED: CIVIL 5 Page 638

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA	)	
VS.	)	CIVIL ACTION
DELBERT L. YAZELL, d/b/a	)	
YAZELL's LITTLE AGES, and	)	NO. 1319
ETHEL MAE YAZELL	)	

SUMMARY JUDGMENT

The Motion for Summary Judgment filed herein by the Plaintiff, United States of America, and the Defendant, Ethel Mae Yazell, having been presented, and the Court being fully advised.

The Court finds that the Plaintiff, United States of America, is entitled to a summary judgment against the Defendant, Delbert L. Yazell, doing business as Yazell's Little Ages, as a matter of law.

The Court finds that the Defendant, Ethel Mae Yazell, based upon her defense of Coverture, is entitled to a summary judgment as a matter of law.

It is therefore ORDERED, ADJUDGED and DECREED that the Plaintiff's Motion for Summary Judgment against the Defendant, Delbert L. Yazell, doing business as Yazell's Little Ages, be and the same hereby is granted, and the Plaintiff is granted judgment against Defendant, Delbert L. Yazell, for the sum of Four Thousand Seven Hundred Nineteen and 66/100 Dollars ($4,719.66) with interest at the rate of three per cent per annum from August 27th, 1962 until the date of

entry of this judgment and with interest at the rate of six per cent per annum thereafter until paid.

It is further ORDERED, ADJUDGED and DECREED that the Defendant, Ethel Mae Yazell's Motion for Summary Judgment be, and the same hereby is granted, that the Plaintiff, United States of America,have and recover nothing against defendant, Ethel Mae Yazell, and that the defendant, Ethel Mae Yazell go hence without day.

SIGNED this 15 day of August, 1963.

/s/ Ben H. Rice Jr.
UNITED STATS DSTRICT JUDGE

ENTERED: Civil 5 Page 843

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA, APPELLANT	)	
v.	)	No. 21154
ETHEL MAE YAZELL, APPELLEE	)	

DESIGNATION OF PORTIONS OF RECORD TO BE PRINTED

Appellant, the United States of America, hereby designates the following portions of the record in the above case to be printed:

Complaint, filed November 16, 1962.

Motion of defendant Ethel Mae Yazell for summary judgment, filed December 10, 1962.

Defendants' answer, filed December 10, 1962.

Response and affidavit in opposition to motion for summary judgment, filed January 17, 1963.

Plaintiff's motion for judgment on the pleadings and for summary judgment, filed January 17, 1963.

Motion for a more definite statement, filed January 17, 1963.

Orders and notices of hearing on motion for summary judgment, filed, respectively, January 17, 1963.

Reply of Ethel Mae Yazell to plaintiff's opposition, filed January 28, 1963.

Defendants' opposition to plaintiff's motion for judgment and/or summary judgment, filed January 28, 1963.

Defendants' first amended answer, filed February 6, 1963.

Order on motion for summary judgment, filed February 7, 1963.

Motion to strike Par. IV of amended answer, and for judgment on pleadings and for summary judgment, filed April 6, 1963.

Order granting motion for summary judgment of Ethel Mae Yazell, filed August 6, 1963.

Order on plaintiff's motion to strike Par. IV, filed August 12, 1963.

Summary judgment, filed August 15, 1963.

/s/ Sherman L. Cohn
SHERMAN L. COHN

/s/ J. F. Bishop
J. F. BISHOP

Attorney, Department of Justice,
Washington D.C. 20530

CERTIFICATE OF SERVICE

I hereby certify that I have served upon the appellee the foregoing designation of the portions of the record to be printed, by mailing, airmail, postage prepaid, this 2nd day of January, 1964, a copy thereof to the attorney of record for the appellee, J. V. Hammett, Esquire, Box 111, Lampasas.

/s/ J. F. Bishop
J. F. BISHOP

Attorney, Department of Justice
Washington, D. C. 20530

[80] *Minute entry of Argument and Submission—May 1, 1964*

[Omitted in printing]

[81] In the
United States Court of Appeals
for the Fifth Circuit

No. 21154

UNITED STATES OF AMERICA, APPELLANT

versus

DELBERT L. YAZELL, D/B/A YAZELL'S LITTLE AGES, AND ETHEL MAE YAZELL, APPELLEES

Appeal From the United States District Court for the Western District of Texas

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Opinion—July 13, 1964

Before HUTCHESON, PRETTYMAN,* and JONES, Circuit Judges

HUTCHESON, *Circuit Judge:* This appeal is by the United States from a judgment sustaining the appellee's defense of coverture on a note executed under a contract entered into under a federal program authorized by congress for the aiding of small business. The suit was against appellee and her husband, and the judgment against the husband is not appealed from. [82] The sole issue was and is whether the law of Texas, where the contract was made, that a married woman is protected by coverture from personal liability upon a contract, is controlling here, or whether, since the transaction was a transaction with the federal government, the Texas law of coverture is nullified and abrogated.

*Of the District of Columbia Circuit, sitting by designation.

The district judge, sustaining Mrs. Yazell's plea of coverture, followed Texas law as it has been uniformly declared:

> *"With the adoption of the common law as the rule of decision in this state, in 1840, our married women were rendered unable to bind themselves by contract. Kavanaugh* v. *Brown,* 1 Texas 481. And although by statute we retained the Spanish law rule that the wife can own property, our adoption of the common law meant that she can contract with respect to it or otherwise only for a purpose pointed out by law and only in such manner as our statutes may permit. *Graham et al* v. *Struve et al,* 76 Texas 533, 13 SW 381; Speer's Law of Marital Rights (3rd Ed.) Sec. 167, p. 226." [*Italics added.*] *Tolbert* v. *Standard Acc. Ins. Co.,* 148 Tex. 235 at p. 238.[1]

and the Texas law of coverture is the controlling law. This applies just as well to government groups and the United States as to anybody else. In short, this is not a [83] case like the cases relied on by the United States of federal commercial paper issued by and as an obligation of the United States. This is a simple case of trying to hold a married woman liable on a contract which under the laws of Texas she was incapable of making, and the claim is no more reasonable than to hold that a minor, or one of unsound mind, could be held liable on a contract despite his disability merely because the United States was a party to it. There is nothing in this view, and we are in no doubt that the decision of the district judge should be affirmed.

The contention of the United States, that because the promissory note sued on was payable to The Small Business Administration, the Texas law as above set forth is not controlling here, is completely unfounded, and we reject as without authority here the opinion of the Sixth Circuit, in *U.S.* vs. *Helz,* 314 F(2) 301, as we reject appellant's contention that the fact that the Small Business Administration is a party to the note sued on nullifies or has any effect on the incapacity of Mrs. Yazell to bind herself by contract.

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[1] Cf. 26 Am. Jur., Sec. 207 et seq; also 30 Tex. Jurisprudence (2nd) Secs. 10 and 11, Sec. 16.

The district judge was right in his decision. His judgment is affirmed.

PRETTYMAN, *Senior Circuit Judge*, dissenting:

Mrs. Yazell and her husband, trading as a partnership, borrowed money from the Federal Government through the Small Business Administration. They signed a note for the loan. They also signed, as security for the loan, a chattel mortgage on the merchandise in [84] their store. They could not pay, and the Government foreclosed on the security. A deficiency remained. The Government sued on the note, praying judgment for the balance of the loan. Mrs. Yazell moved for summary judgment on the ground that she is a married woman and so, in Texas, no personal judgment and no judgment affecting her separate estate can be rendered against her, with a few exceptions not here material. The District Court judge agreed with her, and so do my brethren on this court. I am contrariminded.

A loan from the Federal Government is a federal matter and should be governed by federal law. There being no federal statute on the subject, the courts must fashion a rule. This is the clear holding of *Clearfield Trust Co.* v. *United States.*[2]

To effectuate the policy of the Small Business Act, loans of many hundreds of thousands of dollars each year to businesses must be made throughout the country. These loans can be made only under conditions which will reasonably assure repayment.[3] I think the Act should be of uniform application throughout the country. If local rules are to govern federal contracts in respect to the capacity of married women to contract, so too should local rules as to all other features of contractual capacity govern such contracts. Chaos which would nullify federal programs for disaster relief would arise. And of course there is no reason to restrict this decision to loans under the Small Business Act. It would necessarily apply with equal force to [85] every other federal program which involves contracts between the Federal Government and individuals. A multitude of programs will be frustrated by it.

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[2] 318 U.S. 363 (1943).

[3] 15 U.S.C. § 636(a)(7); 13 C.F.R. § 120.4–2(c) (1958).

It seems to me that, if a person has capacity to get money from the Federal Government, he has the capacity to give it back. The present lawsuit does not involve a general liability for debt; it involves merely the obligation to repay to the Government specific money borrowed from the Government. It seems to me that if a person borrows a horse from a neighbor he ought to be required to give it back if the owner wants it back, whether or not the borrower is a married woman. I suppose the Texas law, by nullifying repayments by married women, tends to minimize ill-advised borrowing. But I think the federal rule ought to be that you must repay what you borrow.

It seems to me that *United States* v. *Helz* [4] was correctly decided by the Sixth Circuit and that it applies here. I would follow it.

[86] In the United States Court of Appeals
for the Fifth Circuit

October Term, 1963

No. 21154

D.C. Docket No. 1319—Civil

UNITED STATES OF AMERICA, APPELLANT

versus

DELBERT L. YAZELL, D/B/A YAZELL'S LITTLE AGES, AND ETHEL MAE YAZELL, APPELLEES

Appeal from the United States District Court for the Western District of Texas

Before HUTCHESON, PRETTYMAN,* and JONES, Circuit Judges

Judgment—July 13, 1964

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Texas, and was argued by counsel;

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[4] 314 F. 2d 301 (1963).

*Of the D.C. Circuit, sitting by designation.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

PRETTYMAN, *Senior Circuit Judge*, dissents.
Issued as Mandate: August 4, 1964.

[87] [Clerk's certificate to foregoing transcript omitted in printing]

[88] Supreme Court of the United States

October Term, 1964

No. 575

UNITED STATES, PETITIONER

vs.

ETHEL MAE YAZELL

Order allowing certiorari—January 18, 1965

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U.S. GOVERNMENT PRINTING OFFICE: 1965

In the Supreme Court of the United States

OCTOBER TERM, 1964

UNITED STATES OF AMERICA, PETITIONER

v.

ETHEL MAE YAZELL

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this case on July 13, 1964.

OPINIONS BELOW

The opinion of the court of appeals is reported at 334 F. 2d 454 (App. pp. 8-12). The order of the district court is not reported.

JURISDICTION

The judgment of the court of appeals was entered on July 13, 1964 (App. p. 13). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether State or federal law is to be applied in determining the obligation of a married woman arising out of a contract executed under the Small Business Act of 1953.

2. Whether, if federal law governs, the federal courts should fashion a uniform rule rather than adopt the diverse rules of coverture followed in the several States.

STATUTE INVOLVED

The Small Business Act of 1953, 67 Stat. 232, as amended, 15 U.S.C. 631, *et seq.*, provides in pertinent part:

> Section 631. *Declaration of policy.*
>
> (a) The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts for property and services for the Government (including but

not limited to contracts for maintenance, repair, and construction) be placed with small-business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation.

* * * *

Section 636. *Additional powers.*

(a) *Loans to small-business concerns; restrictions and limitations.*

The Administration is empowered to make loans to enable small-business concerns to finance plant construction, conversion, or expansion, including the acquisition of land; or to finance the acquisition of equipment, facilities, machinery, supplies, or materials; or to supply such concerns with working capital to be used in the manufacture of articles, equipment, supplies, or materials for war, defense, or civilian production or as may be necessary to insure a well-balanced national economy; and such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis. The foregoing powers shall be subject, however, to the following restrictions and limitations:

(1) No financial assistance shall be extended pursuant to this subsection unless the financial assistance applied for is not otherwise available on reasonable terms.

* * * *

(7) All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment.

STATEMENT

The respondent, Ethel Mae Yazell, and her husband, were the recipients of a $12,000 loan made by the Small Business Administration pursuant to the federal program promulgated by Congress for the aid of small business (Small Business Act of 1953, 67 Stat. 232, as amended, 15 U.S.C. 631, *supra*). The Yazells executed a note in the amount of the loan, together with a chattel mortgage on the merchandise in their jointly owned business. Upon default, the government foreclosed on the security and instituted this action against the co-makers of the note to recover the remaining deficiency. The district court entered summary judgment against Mr. Yazell in the amount of $4,719.66 (the outstanding unliquidated portion of the loan) but held that Mrs. Yazell, under Texas law, "based upon her defense of Coverture, is entitled to a summary judgment as a matter of law."

Upon the government's appeal (Mr. Yazell did not appeal from the adverse judgment which had been entered against him), the judgment of the district court was affirmed by a divided court. The majority (Hutcheson and Jones JJ) ruled that the Texas law of coverture controls and expressly disagreed with the Sixth Circuit's decision in *United States* v. *Helz*, 314 F. 2d 301 (holding that the defense of coverture accorded by State law is unavailable against the United States in an action brought by it under the National Housing Act to recover on a federally insured loan). Judge Prettyman (sitting by designation) dissented. Agreeing with the *Helz* rule, he stated (App. 11):

> A loan from the Federal Government is a federal matter and should be governed by federal law. There being no federal statute on the subject, the courts must fashion a rule. That is the clear holding of *Clearfield Trust Co.* v. *United States.*

Judge Prettyman was of the view that the rule should be uniform for all federal loan programs and should rest on the precept "that you must repay what you borrow" (App. 12).

REASONS FOR GRANTING THE WRIT

The federal government is engaged in various lending programs of national scope. Under the holding below, the obligations of those who enter into standard agreements pursuant to these programs would vary from State to State, depending upon local law. On the other hand, under the Sixth Circuit's rule, enunciated in the *Helz* case, the rights of the United States as lender are uniform throughout the country —which means, by the same token, that individuals throughout the country may be extended the privilege of participation on an equal basis. It is of obvious importance, we believe, that this acknowledged conflict be resolved and that the various lending agencies learn, at the earliest practicable date, whether their contracts are to be governed by fifty different sets of rules or by one set of rules. The difference that makes to the Administrator concerned needs no elaboration.

Since the question is important and the conflict plain,[1] we advert to the merits quite summarily. We point out that this Court has consistently ruled that the *Clearfield Trust*[2] doctrine applies to all contracts of the United States as well as to the issuance of commercial paper. "The validity and construction of contracts through which the United States is exercising its constitutional functions, their consequences on the rights and obligations of the parties, the titles or liens which they create or permit, all present questions of federal law not controlled by the law of any State," *United States* v. *Allegheny County*, 322 U.S. 174, 183. We recognize, to be sure, that this Court would be free to adopt, as a rule of federal law, the principle of reference to local law. *United States* v. *Brosnan*, 363 U.S. 237, 241. We shall argue, however, that such a rule would be particularly inappropriate here. It would, in our view, burden and complicate the administration of federal lending programs and tend to impair the achievement of objectives which are national in character.

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[1] In *United States* v. *Helz*, 314 F. 2d 301, the question was the enforceability, as against a married woman, of a contract which she executed pursuant to the National Housing Act, 12 U.S.C. 1703. There, as here, the woman executed the contract jointly with her husband in order to secure a loan under the federal program. There, as here, she signed a note. There, too, when the government sought to enforce the obligation she asserted the defense of coverture under State law. The district court sustained the defense, but the Sixth Circuit reversed.

[2] *Clearfield Trust Co.* v. *United States*, 318 U.S. 363.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

ARCHIBALD COX,
Solicitor General.

JOHN W. DOUGLAS,
Assistant Attorney General.

SHERMAN L. COHN,
EDWARD BERLIN,
Attorneys.

OCTOBER 1964.

APPENDIX

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 21154

UNITED STATES OF AMERICA, APPELLANT

versus

DELBERT L. YAZELL, d/b/a YAZELL'S LITTLE AGES, and ETHEL MAE YAZELL, APPELLEES

Appeal from the United States District Court for the Western District of Texas

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(July 13, 1964)

Before HUTCHESON, PRETTYMAN,* and JONES, Circuit Judges

HUTCHESON, Circuit Judge: This appeal is by the United States from a judgment sustaining the appellee's defense of coverture on a note executed under a contract entered into under a federal program authorized by congress for the aiding of small business. The suit was against appellee and her husband, and the judgment against the husband is not appealed from. The sole issue was and is whether the law of Texas, where the contract was made, that a married

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* Of the District of Columbia Circuit, sitting by designation.

woman is protected by coverture from personal liability upon a contract, is controlling here, or whether, since the transaction was a transaction with the federal government, the Texas law of coverture is nullified and abrogated.

The district judge, sustaining Mrs. Yazell's plea of coverture, followed Texas law as it has been uniformly declared:

> "*With the adoption of the common law as the rule of decision in this state, in 1840, our married women were rendered unable to bind themselves by contract.* Kavanaugh v. Brown, 1 Texas 481. And although by statute we retained the Spanish law rule that the wife can own property, our adoption of the common law meant that she can contract with respect to it or otherwise only for a purpose pointed out by law and only in such manner as our statutes may permit. Graham et al v. Struve et al, 76 Texas 533, 13 SW 381; Speer's Law of Marital Rights (3rd Ed.) Sec. 167, p. 226." (emphasis added) *Tolbert* v. *Standard Acc. Ins. Co.*, 148 Tex. 235 at p. 238.[1]

and the Texas law of coverture is the controlling law. This applies just as well to government groups and the United States as to anybody else. In short, this is not a case like the cases relied on by the United States of federal commercial paper issued by and as an obligation of the United States. This is a simple case of trying to hold a married woman liable on a contract which under the laws of Texas she was incapable of making, and the claim is no more reason-

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[1] Cf. 26 Am. Jur., Sec. 207 et seq; also 30 Tex. Jurisprudence (2nd) Secs. 10 and 11, Sec. 16.

able than to hold that a minor, or one of unsound mind, could be held liable on a contract despite his disability merely because the United States was a party to it. There is nothing in this view, and we are in no doubt that the decision of the district judge should be affirmed.

The contention of the United States, that because the promissory note sued on was payable to The Small Business Administration, the Texas law as above set forth is not controlling here, is completely unfounded, and we reject as without authority here the opinion of the Sixth Circuit, in *U.S. vs. Helz*, 314 F(2) 301, as we reject appellant's contention that the fact that the Small Business Administration is a party to the note sued on nullifies or has any effect on the incapacity of Mrs. Yazell to bind herself by contract.

Ths district judge was right in his decision. His judgment is AFFIRMED.

PRETTYMAN, *Senior Circuit Judge*, dissenting:

Mrs. Yazell and her husband, trading as a partnership, borrowed money from the Federal Government through the Small Business Administration. They signed a note for the loan. They also signed, as security for the loan, a chattel mortgage on the merchandise in their store. They could not pay, and the Government foreclosed on the security. A deficiency remained. The Government sued on the note, praying judgment for the balance of the loan. Mrs. Yazell moved for summary judgment on the ground that she is a married woman and so, in Texas, no personal judgment and no judgment affecting her separate estate can be rendered against her, with a few exceptions not here material. The District Court judge

agreed with her, and so do my brethren on this court. I am contrari-minded.

A loan from the Federal Government is a federal matter and should be governed by federal law. There being no federal statute on the subject, the courts must fashion a rule. This is the clear holding of *Clearfield Trust Co. v. United States.*[1]

To effectuate the policy of the Small Business Act, loans of many hundreds of thousands of dollars each year to businesses must be made throughout the country. These loans can be made only under conditions which will reasonably assure repayment.[2] I think the Act should be of uniform application throughout the country. If local rules are to govern federal contracts in respect to the capacity of married women to contract, so too should local rules as to all other features of contractual capacity govern such contracts. Chaos which would nullify federal programs for disaster relief would arise. And of course there is no reason to restrict this decision to loans under the Small Business Act. It would necessarily apply with equal force to every other federal program which involves contracts between the Federal Government and individuals. A multitude of programs will be frustrated by it.

It seems to me that, if a person has capacity to get money from the Federal Government, he has the capacity to give it back. The present lawsuit does not involve a general liability for debt; it involves merely the obligation to repay to the Government specific money borrowed from the Government. It seems to me that if a person borrows a horse from a neighbor he ought to be required to give it back if the owner

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[1] 318 U.S. 363 (1943).

[2] 15 U.S.C. § 636(a)(7); 13 C.F.R. § 120.4-2(c) (1958).

wants it back, whether or not the borrower is a married woman. I suppose the Texas law, by nullifying repayments by married women, tends to minimize ill-advised borrowing. But I think the federal rule ought to be that you must repay what you borrow.

It seems to me that *United States v. Helz*[3] was correctly decided by the Sixth Circuit and that it applies here. I would follow it.

[3] 314 F.2d 301 (1963).

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1963

No. 21154

D. C. Docket No. 1319 Civil

UNITED STATES OF AMERICA, APPELLANT,

versus

DELBERT L. YAZELL, d/b/a YAZELL'S LITTLE AGES, and ETHEL MAE YAZELL, APPELLEES.

Appeal from the United States District Court for the Western District of Texas.

Before HUTCHESON, PRETTYMAN*, and JONES, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

"Prettyman, Senior Circuit Judge, Dissents"

July 13, 1964

Issued as Mandate: AUG. 4, 1964.

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* Of the D. C. Circuit, sitting by designation.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1964 746377 285

No. [redacted] 10

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

UNITED STATES OF AMERICA,
Petitioner,

v.

ETHEL MAE YAZELL,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

J. V. HAMMETT
P. O. Box 111
Lampasas, Texas
Attorney for Respondent

Baldwin Printing Company, Inc., 209 West 8th Street, Austin, Texas

No. 575

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

UNITED STATES OF AMERICA,
Petitioner,

v.

ETHEL MAE YAZELL,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent opposes issuance of a writ of certiorari in this case for the reason that the record herein neither supports nor justifies review by this Court under the standards ordinarily applied in granting or denying such writ.

Statement

The decision of the court of appeals sought to be reviewed herein is one affirming the district court judgment for respondent (petition for writ, App. 13). Although not reported, the district court's judgment and the order granting same are shown in the Appendix hereto.

Reasons For Denying The Writ

I.

Both questions presented for review by the petition are purely academic when the case record before the Court herein is considered.

A. Petitioner's first question inquires whether state or federal law is applicable in this case. This question assumes two unsupported and, therefore, irrelevant facts, the first of which is that the district court's summary judgment was granted "under Texas law".

(1) The record shows, however, that neither the district court's summary judgment (App. p. 10) nor its order granting the same (App. p. 12) mentions Texas law. For ought that appears from the face of the summary judgment or order granting the same, the district court applied federal law herein. The rule in question was applied as the appropriate federal rule, as shown by the following: the Act of Congress, the Regulations promulgated by the Administrator of Small Business Administration pursuant to such Act, and the contract documents in this particular case, separately and collectively, conclusively establish that the coverture law applied in this case was applied as a rule of federal law controlling this case. In other words, the parties contracted in reference to Texas law insofar as the validity of the note and chattel mortgage were concerned (validity as distinguished from remedy.)

(a) The Small Business Administration is the successor to Reconstruction Finance Cor-

poration. The statute, known as The Small Business Act of 1953, as amended, (67 Stat. 232, 15 U.S.C. 631 et seq) contains no provision concerning legal competency of the borrower other than that it be a small business concern as defined in Section 632, or concerning the form or substance of the security instruments evidencing loans to be made by it, such as this one, other than to prescribe a maximum interest rate and repayment period, and that [Section 636 (a) (7)] "* * * all loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment." There is nothing in the Act expressly or impliedly exempting security instruments to be taken by Small Business Administration from the requirements of the local property laws (in effect where the loan is made) governing validity thereof exactly as required of all other lenders. *Bumb, Trustee v. United States*, 276 F. 2d 729 (9th Circuit, 1960). The foregoing are the sole and only directions of the Congress respecting legal competency of the borrower, or the form and substance of the security instruments evidencing loans to be made by Small Business Administration, despite the well-known fact that there is no other body of federal law, legislative or otherwise, prescribing form or substance of notes and chattel mortgages, or legal competency of borrowers. This silence by Congress, in the face of the then existing fact of total absence of a body of federal law prescribing form, substance and legal competency, compels the conclusion that Congress intended that Small Business Administration contracts should be made in reference to local law as to these

matters. No one seriously suggests that Congress placed Small Business Administration in business with inadequate tools to perform its functions.

(b) The Administrator of Small Business Administration reached the same conclusion expressed above as evidenced by the Regulations promulgated pursuant to the Act [15 U.S.C.A., Section 634 (b) (6)]. Regulation 122.17 (f) reads as follows:

> "(f) Security may include: Mortgage on land, buildings and equipment; assignment of warehouse receipts for marketable merchandise stored in satisfactory warehouses; mortgage on chattels; or assignment of current receivables (accounts, notes or trade acceptances). The applicant may offer as additional collateral any other assets of sound value. A pledge of inventories generally will not be regarded as satisfactory collateral unless stored in a bonded or otherwise acceptable warehouse, *or unless the applicable State law provides for creating and maintaining a satisfactory lien upon inventory not so warehoused.*" (Emphasis supplied).

Regulation 123.7 (a) in reference to disaster loans reads as follows:

> "(a) The Small Business Act, as amended, contains no specific requirements with respect to collateral as security for a disaster loan, nor has SBA established any firm rule in regard to collateral. However, SBA requires applicants to pledge whatever collateral they can furnish. SBA will give consideration to the moral risk involved and to evidence showing a reasonable prospect that the loan will be repaid."

Small Business Administration has, from the beginning, just as Reconstruction Finance Corporation did before it, looked to the local law of each community in which it operated to provide the rules governing the validity of its security instruments, and the general legal competency of its borrowers. The aforesaid Regulations are conclusive of this statement. Small Business Administration's use, as federal law, of the established local laws concerning the form and substance of security instruments and legal competency of borrowers, was not only reasonable and appropriate, but in the absence of any other federal rules thereon, it was absolutely necessary to any organized and orderly discharge of its statutory duties.

(c) Thus, in this very case, the chattel mortgage complied with the law of the State of Texas as to substance and form. It was acknowledged before a Notary Public by respondent as a married woman in full compliance with Texas law. By express language, the chattel mortgage was executed in reference to Art. No. 4000, Revised Civil Statutes of Texas, as amended, and thereby expressly authorized respondent's husband to sell and convey the merchandise daily exposed for sale in the retail trade, and otherwise relied upon the Texas law in reference to maintenance of the stock of merchandise. This chattel mortgage was a part of the contract which included the promissory note made the basis of this suit. Thus, it appears that petitioner specifically in this case, as well as generally in such matters adopted local law and used it as a part of the terms of the federal contract.

(2) If respondent is mistaken in her assertion that the local laws with respect to form, substance and competency were adopted by Congress, by the Administrator of Small Business Administration, and by the parties to the contract in this case, the district court nevertheless applied federal rules in its decision herein on authority of *Clearfield Trust Co. v. United States*, 318 U.S. 363, 63 S. Ct. (1943) where this Court held that "in absence of an applicable Act of Congress it is for the federal courts to fashion the governing rule of law according to their own standards * * * In our choice of the applicable federal rule we have occasionally selected state law."

(3) All of the foregoing emphasizes petitioner's second fallacious assumption, i.e., that there is a conflict between state and federal rules to be applied in this case. The alleged conflict is not identified in the petition. We submit that no such conflict exists because the one available, appropriate set of rules pertaining to legal competency and the form and substance of the security instruments has always been used by Small Business Administration, this being the set of rules of which a part was applied by the district court in this case.

The academic nature of the review sought by petitioner herein is clearly illustrated by two erroneous statements or reasons given by petitioner for granting the writ herein. There are no "standard agreements pursuant to * * *" the various lending programs of the federal government, not even of the Small Business Administration. There are none, the record does not show any, and the suggestion that there are any such standard agree-

ments is without foundation and should be ignored. Neither is there any foundation in the record of this case or otherwise for petitioner's suggestion that use of local rules as to form and substance of security instruments and legal competency of borrowers deprive some persons of "* * * the privilege of participation on an equal basis" in the lending program of the Small Business Administration. Aside from the fact that this statement is unsupported in this record, we believe it impossible for petitioner to state any reasonable hypothetical application of local rules so as to reflect any discrimination. It is to be noted in this case that petitioner's judgment against respondent's husband gave it all the relief to which it was entitled against the mortgaged property or as a general obligation against any property to be acquired by the community estate of respondent and her husband.

B. Petitioner's second question inquiring whether, if federal law governs, the federal courts should fashion a uniform rule rather than adopt the diverse rules of coverture followed in the several States, assumes that neither the Congress nor the Small Business Administration has adopted the rules applicable to this case; that such rules are non-existent and that, therefore, an appropriate rule must be fashioned by the federal courts according to their own standards. This discretion is generally exercised only "in the absence of an applicable Act of Congress". Here we have the intent of Congress to use as the appropriate law the local rules of the several States concerning the form and substance of security instruments of Small Business Administration and the legal competency of its bor-

rowers. These rules have been adopted and are being used by Small Business Administration by Regulations thought to be binding on it as well as others until duly modified by the Administrator. Finally, such local rules were made a part of the contract in question by the parties thereto which included petitioner and respondent. What we have previously said regarding the academic nature of petitioner's first question applies with equal force to its second question.

C. As the record in this case does not raise either of petitioner's questions, it is clear that they are of an academic and speculative nature only, and that there are no special and important reasons for granting the writ herein.

II.

There is no direct conflict between the decision in this case and the decision in *United States v. Helz*, 314 F. 2d 301, Sixth Circuit. The statutes, Regulations and contracts were entirely different in the two cases. *Helz* involved the Federal Housing Act, whereas the instant case involves the Small Business Act of 1953. Any apparent conflict between the two decisions is not apt to have any continuing future consequences for the reason that Small Business Administration necessarily must continue to rely upon local property laws if it is to function from now until such future date as Congress may see fit to adopt at one time an entire body of property law for use by Small Business Administration. It appears that Small Business Administration (and any other federal lending agencies so situated must either make use of the systems of local property laws of the several States in which it

operates, or it must cease functioning until Congress provides a substitute system for its guidance and control. The mere suggestion demonstrates the impracticality of petitioner's posture in this case.

III.

No constitutional questions are involved in this case. Petitioner's asserted questions for decision are not raised by the record, hence consideration thereof by this Court will necessarily be in the abstract. It seems to use that granting the writ in this case will serve no purpose other than perhaps to satisfy a philosophical urge to debate the wisdom of Congress and of the Administrator of Small Business Administration in adopting local property rules respecting form and substance of its security instruments, and the legal competency of those to whom it lends.

Conclusion

Respondent submits that under the standards usually applied by this Court the petition for a writ of certiorari in this case should be denied.

Respectfully,

J. V. HAMMETT
P. O. Box 111
Lampasas, Texas
Attorney for Respondent

APPENDIX

* * *

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA VS. DELBERT L. YAZELL, d/b/a YAZELL'S LITTLE AGES, and ETHEL MAE YAZELL	CIVIL ACTION No. 1319

Summary Judgment

The Motion for Summary Judgment filed herein by the Plaintiff, United States of America, and the Defendant, Ethel Mae Yazell, having been presented, and the Court being fully advised.

The Court finds that the Plaintiff, United States of America, is entitled to summary judgment against the Defendant, Delbert L. Yazell, doing business as Yazell's Little Ages, as a matter of law.

The Court finds that the Defendant, Ethel Mae Yazell, based upon her defense of Coverture, is entitled to a summary judgment as a matter of law.

It is therefore ORDERED, ADJUDGED and DECREED that the Plaintiff's Motion for Summary

Judgment against the Defendant, Delbert L. Yazell, doing business as Yazell's Little Ages, be and the same hereby is granted, and the Plaintiff is granted judgment against Defendant, Delbert L. Yazell, for the sum of Four Thousand Seven Hundred Nineteen and 66/100 Dollars ($4,719.66) with interest at the rate of three per cent per annum from August 27th, 1962 until the date of entry of this judgment and with interest at the rate of six per cent per annum thereafter until paid.

It is further ORDERED, ADJUDGED and DECREED that the Defendant, Ethel Mae Yazell's Motion for Summary Judgment be, and the same hereby is granted, that the Plaintiff, United States of America, have and recover nothing against defendant, Ethel Mae Yazell, and that the defendant, Ethel Mae Yazell go hence without day.

SIGNED this 15 day of August, 1963.

/s/ Ben H. Rice, Jr.
UNITED STATES DISTRICT JUDGE.

ENTERED: Civil 5 Page 843

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA *Plaintiff* v. Delbert L. Yazell, d/b/a YAZELL'S LITTLE AGES, and Ethel Mae Yazell *Defendant*	CIVIL ACTION No. 1319

Order Granting Motion For Summary Judgment of Defendant Ethel Mae Yazell

Came on to be considered the motion for summary judgment filed herein by the defendant, Ethel Mae Yazell, and the Court having considered said motion and the briefs of the parties thereon, is of the opinion that said defendant's plea of coverture herein should be sustained and that judgment should be entered in favor of the said Mae Yazell.

IT IS, THEREFORE ORDERED that Ethel Mae Yazell's motion for summary judgment herein be, and the same is hereby, granted.

It is further ORDERED by the Court that the plea of set-off filed by Delbert L. Yazell be in all things stricken and that the United States is entitled to recover its Judgment against the said Del-

bert L. Yazell for the amount sued for; Plaintiff's attorneys are requested to submit appropriate Judgment to this Court, that is take nothing against Ethel Mae Yazell, and recover in full on its claim against Delbert L. Yazell, furnishing copy thereof to defendants' attorney.

Done this 6th day of August, 1963.

/s/ Ben H. Rice, Jr.
United States District Judge

ENTERED: Civil 5 Page 634

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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 575

UNITED STATES OF AMERICA, PETITIONER

v.

ETHEL MAE YAZELL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The order of the United States District Court for the Western District of Texas (R. 75–76) is not reported. The majority and dissenting opinions of the Court of Appeals for the Fifth Circuit (R. 81–84) are reported at 334 F. 2d 454.

JURISDICTION

The judgment of the court of appeals was entered on July 13, 1964 (R. 84–85). The petition for a writ of certiorari was filed on October 8, 1964, and was granted on January 18, 1965 (R. 85). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

As consideration for a loan issued under the Small Business Act of 1953, a husband and wife jointly executed a note secured by a chattel mortgage on the merchandise in their jointly owned business. Upon default, the government sued both spouses on their personal undertakings for the outstanding deficiency. Applying the Texas law of coverture, the courts below absolved the wife of personal liability. The questions presented are:

1. Whether State or federal law is to be applied in determining the obligation of a married woman arising out of a contract executed under the Small Business Act of 1953.

2. Whether, if federal law governs, the courts should fashion a uniform rule rather than adopt the diverse rules of coverture followed in the several States.

3. Whether the uniform federal rule should be that married women may not escape their contractual undertakings by assertion of the defense of coverture.

STATUTE INVOLVED

The Small Business Act of 1953, 67 Stat. 232, as amended, 15 U.S.C. 631, *et seq.*, provides in pertinent part:

Section 631. *Declaration of Policy.*

(a) The essence of the American economic system of private enterprise is free competition. Only through full and free competition

can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts for property and services for the Government (including but not limited to contracts for maintenance, repair, and construction) be placed with small-business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation.

* * * * *

Section 636. *Additional powers.*

(a) *Loans to small-business concerns; restrictions and limitations.*

The Administration is empowered to make loans to enable small-business concerns to finance plant construction, conversion, or expansion, including the acquisition of land; or to finance the acquisition of equipment, facilities, machinery, supplies, or materials; or to supply such concerns with working capital to be used in the manufacture of articles, equipment, sup-

plies, or materials for war, defense, or civilian production or as may be necessary to insure a well-balanced national economy; and such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis. The foregoing powers shall be subject, however, to the following restrictions and limitations:

(1) No financial assistance shall be extended pursuant to this subsection unless the financial assistance applied for is not otherwise available on reasonable terms.

* * * * *

(7) All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment.

STATEMENT

The respondent, Ethel Mae Yazell, and her husband, were the recipients of a $12,000 loan issued by the Small Business Administration under the authority of the federal program promulgated by Congress for the assistance of small business (Small Business Act of 1953, 67 Stat. 232, as amended, 15 U.S.C. 631, *supra*). The Yazells executed a note in the amount of the loan, together with a chattel mortgage on the merchandise in their jointly owned business. When they defaulted, the government foreclosed on the security and instituted this action against the co-makers of the note to recover the deficiency. The district court entered summary judg-

ment against Mr. Yazell in the amount of $4,719.66 (the outstanding unliquidated portion of the loan) but, applying Texas law, upheld Mrs. Yazell's defense of coverture and dismissed the case against her (R. 75).

Upon the government's appeal (Mr. Yazell did not appeal from the adverse judgment which had been entered against him), the judgment was affirmed by a divided court. The majority (Circuit Judges Hutcheson and Jones) ruled that the Texas law of coverture controls and expressly disagreed with the Sixth Circuit's decision in *United States* v. *Helz*, 314 F. 2d 301 (holding that the defense of coverture accorded by State law is unavailable against the United States in an action brought by it under the National Housing Act to recover on a federally insured loan). Circuit Judge Prettyman (sitting by designation) dissented. Agreeing with the *Helz* rule, he stated (R. 83):

> A loan from the Federal Government is a federal matter and should be governed by federal law. There being no federal statute on the subject, the courts must fashion a rule. That is the clear holding of *Clearfield Trust Co.* v. *United States.*

Judge Prettyman was of the view that the rule should be uniform for all federal loan programs and should rest on the precept "that you must repay what you borrow" (R. 84).

765-719—65——2

SUMMARY OF ARGUMENT

I

The question whether a married woman who has borrowed money from an agency of the United States should be held liable for its repayment is governed by federal law—and not by the law of the particular State where the contract was executed. That is an application of the settled rule that, absent a legislative declaration to the contrary, federal law determines rights and obligations arising under a nationwide program authorized by Congress. There is no basis here for subordinating the constitutional power of the national government to deal with a part of its citizens to restrictions imposed by local law.

II

This is not an instance for the federal law to adopt local law; here a uniform federal rule is necessary and proper. Deference to local laws governing the capacity of married women would complicate the administration of the small business loan program and restrict its scope. State interest in preserving the archaic rule of coverture does not outweigh the need for uniformity. The federal law should reject the principle of coverture. There is no reason to perpetuate the anachronistic restriction, especially with respect to dealings with agencies of the government which are not to be presumed to engage in overreaching.

ARGUMENT

I

FEDERAL LAW DETERMINES THE RIGHTS AND OBLIGATIONS ARISING OUT OF A CONTRACT EXECUTED WITH AN AGENCY OF THE UNITED STATES PURSUANT TO A CONSTITUTIONALLY AUTHORIZED NATIONWIDE PROGRAM

The court below held that State law determines whether a married woman is to be held accountable for the performance of a contractual undertaking owed an agency of the United States. That ruling is at war with the principle consistently enunciated in decisions of this Court that the rights of the United States under contracts entered into as part of an authorized nationwide program are to be determined by federal and not by State law.

Thus, in *Board of Commissioners* v. *United States,* 308 U.S. 343, and in *Royal Indemnity Co.* v. *United States,* 313 U.S. 289, involving the allowance of interest on obligations running to the United States or its Indian wards, it was held that the federal courts were charged with determining the appropriate measure of damages for delayed payment of the sum due according to their own criteria, unrestrained by considerations of local policy. Similarly, federal rather than State law has been applied to ascertain the liability of the maker of accommodation paper to a federal corporation insuring the holder's deposits (*D'Oench Duhme & Co.* v. *Federal Deposit Ins. Corp.,* 315 U.S. 447); to decide the extent of the obligation of the guarantor of a forged endorsement on a check drawn by the United States (*Clearfield Trust Co.* v.

United States, 318 U.S. 363); to determine whether particular machinery was the property of the United States or its private contractor (*United States* v. *Allegheny County,* 322 U.S. 174); to adjudicate a third-party tortfeasor's responsibility for damages suffered by the United States as a result of an injury inflicted upon a serviceman (*United States* v. *Standard Oil Co.,* 332 U.S. 301); to the interpretation of a lease to which an agency of the United States was a party (*United States* v. *93.970 Acres,* 360 U.S. 328); to settle the obligations of the Veterans' Administration under mortgages which it has guaranteed following default (*United States* v. *Shimer,* 367 U.S. 374); and, most recently, to fix the ownership of United States savings bonds after the death of one of the co-owners (*Free* v. *Bland,* 369 U.S. 663). Cf. *Bank of America* v. *Parnell,* 352 U.S. 29.[1] In many

[1] In *Bank of America* the Court applied State law of burden of proof in an action between private parties for conversion of government bonds. The Court recognized, however, that "[f]ederal law of course governs the interpretation of the nature of the rights and obligations created by the Government bonds themselves," emphasizing that the absence of the United States, or an agency thereof, as a party litigant did not "necessarily preclude[s] the presence of a federal interest, to be governed by federal law * * *." 352 U.S. at 34. Indeed, in suits between private litigants involving federal policies or statutes, federal law has been held to be controlling. See, *Free* v. *Bland,* 369 U.S. 663, 670; *Yiatchos* v. *Yiatchos,* 376 U.S. 306, 307; *Deitrick* v. *Greaney,* 309 U.S. 190, 200–201; *Sola Electric* v. *Jefferson Electric Co.,* 317 U.S. 173, 176; *Holmberg* v. *Armbrecht,* 327 U.S. 392, 394–395; *Dice* v. *Akron,* C. & Y. R. Co., 342 U.S. 359, 361–362; *Prudence Corp* v. *Geist,* 316 U.S. 89, 95; Moore's *Commentary on the United States Judicial Code,* pp. 309, 340 (1949).

respects the present case is an even more compelling instance for the application of federal law.

It is axiomatic that the United States has, as "an incident to [its] general right of sovereignty," the "capacity to enter into contracts" (*United States* v. *Tingey*, 5 Pet. 115, 128) and enjoys "the unrestricted power * * * to determine those with whom it will deal." *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113, 127. The decision below rejects that principle, holding in effect, that a State may prescribe with whom the government may contract. This is not a mere "drawing on the ready-made body of State law" (defining property concepts or family relationships) to supply content to an ambiguous term in a federal statute. Compare *De Sylva* v. *Ballentine*, 351 U.S. 570, 580–581; *Reconstruction Finance Corp.* v. *Beaver County*, 328 U.S. 204. The question here is whether the constitutional power of the national government to deal with a part of the citizenry must bow before an outmoded local rule of contractual capacity. To be sure, Congress might have deliberately subjected the federal program to the vagaries of State law. See, *e.g.*, the Federal Tort Claims Act, 28 U.S.C. 1346(b) (discussed in *Richards* v. *United States*, 369 U.S. 1) and the Social Security Act, 42 U.S.C. 416(h). But in the absence of an express Congressional declaration to that effect, no such purpose is to be implied. *United States* v. *93.970 Acres, supra*, 360 U.S. at 332–333; *Clearfield Trust Co.* v. *United States, supra*, 318 U.S. at 367. Here, there is nothing whatever to suggest a design to subordinate the national program to local restrictions.

II

IN DETERMINING THE RESPONSIBILITY OF MARRIED WOMEN FOR THEIR CONTRACTUAL OBLIGATIONS VOLUNTARILY UNDERTAKEN WITH AN AGENCY OF THE UNITED STATES THE COURT SHOULD FASHION A UNIFORM FEDERAL RULE WHICH DECLINES TO ADOPT THE DEFENSE OF COVERTURE

The determination that federal law governs does not necessarily require fashioning a uniform federal rule; it is sometimes appropriate to apply the principle of reference to local law. But that is not the usual course where a nationwide program is involved. For such a solution tends to defeat the very purpose of the Supremacy Clause—the avoidance of "disparities, confusions and conflicts" flowing from the application of varied State law rules. See *United States* v. *Allegheny County,* 322 U.S. 174, 183. At all events, here, as in *Clearfield Trust* (318 U.S. at 367), "the desirability of a uniform rule is plain."

A. THE APPLICATION OF DIVERGENT STATE RULES OF COVERTURE WOULD IMPAIR THE EFFECTUATION OF THE CONGRESSIONAL PURPOSE UNDERLYING THE ENACTMENT OF THE SMALL BUSINESS ACT OF 1953

The purpose of the Small Business Act of 1953 is to permit the government to "aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise * * *." 15 U.S.C. 631(a). To this end, the Small Business Administration is given, as this Court observed, "extraordinarily broad powers to accomplish these important objectives." *Small Business Administration* v. *McClellan,* 364 U.S. 446, 447. But its mandate is not entirely without restrictions.

On the one hand, the Act provides that "[n]o financial assistance shall be extended * * * unless the financial assistance applied for is not otherwise available on reasonable terms." 15 U.S.C. 636(a)(1).[2] Thus, the government will not be dealing with enterprises of unquestioned financial soundness. On the other hand, the Administration is cautioned that "[a]ll loans made * * * shall be of such sound value or so secured as reasonably to assure repayment." 15 U.S.C. 636(a)(7).[3] In short, undue risks must be avoided. The practical accommodation of these apparently contradictory injunctions is to ask the borrower for additional security, including meaningful personal guarantees. Accordingly, the Small Business Administration follows the practice (generally observed by government lending agencies) of requiring married women to execute personal undertakings whenever loans are made to their husbands or to a business which he, individually, or they jointly, own. But, that precaution is, of course, wasted if local exemp-

[2] See, also, 15 U.S.C. 642, requiring the applicant to "furnish the names of lending institutions to which such business enterprise has applied for loans together with dates, amounts, terms and proof of refusal." For the consistent legislative history, see S. Rep. No. 604, 84d Cong., 1st Sess. (1953), p. 11; H. Rep. No. 494, 83d Cong., 1st Sess. (1953), p. 12; and 99 Cong. Rec. 6127, 6144, 6149. The Congressional directive has been implemented by the Small Business Administrator in regulations. See 13 C.F.R. (1964 Cum. Pocket Supp.) 120.1, 122.1, 122.14 and 122.16(a).

[3] See S. Rep. No. 604, 83d Cong., 1st Sess. (1953), p. 11, H. Rep. No. 494, 83d Cong., 1st Sess. (1953), pp. 7, 12, and the remarks of Senator Capehart, floor leader of the bill, at 99 Cong. Rec. 9203.

tions in favor of married women are imported into the governing federal law.

The dimensions of the problem are substantial—even if we confine the focus to State laws bearing on the responsibility of married women. In Texas alone the Small Business Administration had almost $46 million in business loans and $15 million in disaster loans outstanding as of December 31, 1963.[4] In the eleven other States which still limit, to any significant extent, the capacity of married women to contract,[5] there were outstanding as of that date over $187 million in business and $22 million in disaster loans.[6] Moreover, the Small Business Administration is only one of many federal agencies engaged in similar lending programs. We need only cite the Federal Home Loan program which the court below thought indistinguishable. See *United States* v. *Helz*, 314 F. 2d 301 (C.A. 6). The important impact on the "government's purse" argues strongly against deferring to local rules of coverture. See *United States* v. *Standard Oil Co.*, 332 U.S. 301, 306.

Moreover, apart from impeding the collection of outstanding loans, recognition of local doctrines of coverture would restrict the practical scope of the small business assistance program for the future.

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[4] 1,363 business loans in the amount of $45,706,866; 4,172 disaster loans in the amount of $14,856,798.

[5] These States are: Alabama, Arizona, California, Florida, Georgia, Idaho, Indiana, Kentucky, Michigan, Nevada, and North Carolina. See note 10, p. 15, *infra*.

[6] There were 4,266 business loans and 2,900 disaster loans outstanding in those States representing total obligations in the amounts of $187,258,863 and $22,103,390, respectively.

Indeed, to comply with the mandate that it make loans only where repayment is reasonably assured by the furnishing of adequate security, the Small Business Administration would undoubtedly have to curtail its loans to married women in those eleven States that still retain substantial coverture restrictions. Putting to one side the considerable administrative complications in uncovering and appraising disparate State rules, a solution which discriminates against married women in certain areas would offend the objective of the national program to render financial assistance to *all* qualifying small business enterprises everywhere.

Finally, we are not here confronted with the dilemma posed by *United States* v. *Brosnan*, 363 U.S. 237, where it was observed that "the need for uniformity in this instance is outweighed by the severe dislocation to local property relationships which would result from our disregarding state procedures." 363 U.S. at 242. Coverture is a vestige of a bygone era which, today, has been rejected by the great majority of States. See *Hoyt* v. *Florida*, 368 U.S. 57, 61–62; *Bank* v. *Partee*, 99 U.S. 325, 329. At least in dealings with the national government, there is no continuing justification for disabling married women from the performance of contractual obligations. Certainly, State interest in preserving the archaic rule of coverture as against the United States falls far short of "outweighing" the considerations arguing for the adoption of a uniform federal standard.[7]

[7] The State prohibitions against married women entering into certain types of contracts stem from their status as *parens*

B. THE FEDERAL RULE SHOULD REJECT THE DEFENSE OF COVERTURE

The federal law should not perpetuate an anachronistic restriction on the rights of a married woman that has fallen into such general disfavor in the last several decades.[8] Mr. Justice Cardoza has summed up the principle that should, in our view, govern:

> * * * Social, political, and legal reforms have changed the relations between the sexes, and put women and men upon a plane of equality. Decision founded upon the assumption of a by-gone inequality were unrelated to present day realities, and ought not to prescribe the rule of life.[9]

The trend has been specifically noted by the Court on at least two occasions. As early as 1878, in *Bank* v. *Partee*, 99 U.S. 325, 331, the Court recognized that the doctrine of common-law disabilities of married women to contract has "been greatly modified in most of the States." And, quite recently, the Court noted "the enlightened emancipation of women from the restrictions and protections of bygone years, and their entry into many parts of community life for-

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patriae to their citizens. Though States may ordinarily assume such a status, it is the United States that stands as *parens patriae* "in respect of their relations with the Federal Government." *Massachusetts* v. *Mellon*, 262 U.S. 447, 485–486.

[8] Williston has commented that the movement away from this common-law disability has been "so far reaching that little is left of the old restrictions." 2 Williston, *Contracts*, p. 117 (3d ed., 1959). See, to the same effect, Rapacz, *Progress of the Property Law Relating to Married Women*, 11 U. Kan. City L. Rev. 173, 186.

[9] Speech quoted in Henson, *Married Woman's Contractual Rights Reviewed in Georgia*, 14 Ga. B.J. 78.

merly considered to be reserved to men." *Hoyt* v. *Florida*, 368 U.S. 57, 61–62. As we have said, there are now but eleven States that still limit a married woman's capacity to contract to any significant extent.[10] And Texas itself has recently repudiated the defense of coverture.[11]

Moreover, whatever surviving justification there may be for continuing the rule of coverture with respect to other relationships, it is difficult to discern the reasons for it in dealings between married women and agencies of the national government. Certainly, one of the dominant objectives of coverture was to protect married women—assumed to be untutored in busi-

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[10] Alabama, Florida, Indiana, Kentucky and North Carolina prohibit married women from conveying or mortgaging realty without their husband's assent. Code of Ala., Title 34, § 73; Fla. Stat. Ann. § 708.08; Ann. Ind. Stat. § 38–102; Ky. Rev. Stat. § 404.020; Gen. Stat. No. Car. § 52–2. Georgia, Idaho and Kentucky limit the ability of married women to act as sureties or guarantors for others. Ga. Code Ann. § 53.503; *Bank of Commerce* v. *Baldwin*, 14 Idaho 75, 93 Pac. 504 (1908); Ky. Rev. Stat. § 404.010. Arizona, California, Michigan and Nevada prohibit married women from making contracts binding anything other than her separate property. Ariz. Rev. Stat. § 25–214; Calif. Civ. Code § 167; Mich. Stat. Ann. §§ 26.181–26.184; Nev. Rev. Stat. § 123.170. Arizona additionally provides that the husband alone may dispose of personal property during coverture. Ariz. Rev. Stat. § 25–211(B). Within these limitations, married women may, as a rule, freely contract even in those eleven States.

[11] As of August 22, 1963, a married woman residing in Texas has the capacity to contract and be contracted with and to sue and be sued as if she were a femme sole, and, while she may not convey any part of the community property of the marriage, her separate property is available for the satisfaction of her debts. Vernon's Ann. Rev. Civ. Stat. of Tex., Arts. 4621 and 4626.

ness affairs—from the overreaching tactics of unprincipled merchants or money lenders. While, today, married women are surely less sheltered from the realities of the business world, overly persuasive salesmen still remain and some may deem it wise, for this reason, to maintain the ancient barrier. But those considerations hardly apply when the government itself is the other party. We deal here with federal programs for the assistance of the citizenry. Adoption of the rule of coverture for federal contracts, and, specifically, for the small business loans, would effectively curtail the scope of the national program by excluding from participation married women in some eleven States. There is no warrant for creating such an unnecessary discrimination.

CONCLUSION

For the foregoing reasons the judgment of the court of appeals should be reversed.

Respectfully submitted.

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II.

LIST OF AUTHORITIES

Cases:

Statutes:

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No. 10

In the Supreme Court of the United States

OCTOBER TERM, 1965

UNITED STATES OF AMERICA, PETITIONER

v.

ETHEL MAE YAZELL, RESPONDENT

BRIEF FOR RESPONDENT

TO SAID HONORABLE COURT:

Respondent respectfully submits that the trial court judgment in this case should be affirmed on the basis of the record of evidence and pleadings actually made herein, as well as on the basis of applicable rules of law heretofore established by Congressional Act (including the regulations promulgated by the Administrator of Small Business Administration pursuant thereto), and by this Court.

STATEMENT

Respondent does not acquiesce in all of petitioner's statement of the case, and does not concede that the three questions presented by petitioner are actually or properly

before this Court for review. However, in the interest of brevity specification of the claimed deficiencies will be reserved for more appropriate places in the following discussion.

I.

THERE IS NO CONFLICT IN THIS CASE BETWEEN STATE AND FEDERAL LAW, INTERESTS, OR POWERS; NEITHER IS THERE ANY REAL ISSUE ABOUT WHETHER STATE OR FEDERAL LAW, AS SUCH, IS APPLICABLE TO THE CONTRACT IN QUESTION.

Any argument to the contrary notwithstanding, respondent does *NOT* contend that state law *AS SUCH* controls in this case. The note in question evidenced a disaster loan made to respondent's husband in 1957 by Small Business Administration pursuant to Section 636(b) of The Small Business Act of 1953, 67 Stat. 232, as amended, 15 U.S.C. 631, et seq. Viewed from the standpoint of *SOURCE* or *SOVEREIGNTY*, all legal questions arising from such transaction are federal questions, to be answered by reference to federal law *AS SUCH*. Despite any implication to the contrary in petitioner's argument, the State of Texas is not a party to this case, directly or indirectly; no interest of the State of Texas is involved herein, and by no stretch of any imagination can it be claimed that the State of Texas has ever attempted to impose any restriction or burden on the parties to this case in reference to any matter involved herein. Respondent's statement that the questions in this case are federal questions, to be answered by reference to federal law, should be sufficient to establish that there is not any real issue about whether state or federal law *AS SUCH* applies in this case.

Respondent does contend that the Texas rule of coverture is applicable to the contract involved in this case, not because it is state law, but rather because the local property rules, of which the rule of coverture is one, were adopted or absorbed by Congress, directly and indirectly, to be used as a part of the federal rules fixing the rights and obligations of the parties in this case, petitioner and respondent alike. This Court has long recognized that the Congress has the power to adopt, absorb or otherwise provide for federal use of local or state rules and laws as a part of a federal system. *United States v. 93.970 Acres of Land*, 360 U.S., 471, 79 S.Ct. 1193; *Clearfield Trust Co. v. United States*, 318 U.S. 363, 63 S. Ct. 573; and *United States v. Miller*, 317 U.S. 369, 380, 63 S.Ct. 276, 283. Petitioner concedes that Congress has such power. (p. 9, petitioner's brief) Moreover, in every case cited by petitioner in support of its argument I the Court likewise recognized that Congress has such power.

II.

CONGRESS HAS ADOPTED, DIRECTLY AND INDIRECTLY, LOCAL PROPERTY RULES TO BE USED BY SMALL BUSINESS ADMINISTRATION AS APPROPRIATE FEDERAL RULES GOVERNING VALIDITY OF SECURITY INSTRUMENTS TO BE TAKEN BY IT FROM A PRIVATE ENTERPRISE.

The Small Business Act of 1953, as amended, contains no provision concerning legal competency of the borrower other than that it be a small business concern as defined in Section 632, or concerning the form or substance of the security instruments evidencing loans to be made by it, such as this one, other than to prescribe a maximum

interest rate and repayment period and that "* * * all loans made under the subsection [Section 636 (a) (7)] shall be of such sound value or so secured as reasonably to assure repayment."

There is no other body of federal law, legislative or otherwise, prescribing form or substance of notes and chattel mortgages, or legal competency of borrowers from Small Business Administration. Neither is there anything in the Act expressly or indirectly exempting security instruments to be taken by it from the requirements of the local property laws (in effect where each loan is made) governing validity thereof as in the case of all other lenders, nor depriving Small Business Administration of any of the benefits of such local property laws in reference to said matters. Essentially the same circumstances prevailed with respect to Reconstruction Finance Corporation, the predecessor of Small Business Administration.

Acceptance of the views urged by petitioner in this case necessarily means that these two agencies have continuously operated, with success, for some thirty-five years, making thousands of loans aggregating many millions of dollars (some of the statistics for which are given by petitioner on p. 12 of its brief, although none of said information appears in the record of this case) without the benefit, protection or guidance of any rules prescribing form or substance of its security instruments, or legal competency of its borrowers. This is unreasonable. Congress did not put these two agencies into the lending business without giving them the necessary tools. Instead the Act contains section 634 (b)(6), by which the Congress authorized

and directed the Administrator of Small Business Administration to

> "make such rules and regulations as he deems necessary to carry out the authority vested in him by or pursuant to this chapter."

Pursuant thereto, the Administrator of Small Business Administration promulgated the following (among others) regulations, to-wit:

Regulation 122.17(f) reads as follows:

> "(f) Security may include: Mortgage on land, buildings and equipment; assignment of warehouse receipts for marketable merchandise stored in satisfactory warehouses; mortgage on chattels; or assignment of current receivables (accounts, notes or trade acceptances). The applicant may offer as additional collateral any other assets of sound value. A pledge of inventories generally will not be regarded as satisfactory collateral unless stored in a bonded or otherwise acceptable warehouse, *or unless the applicable State law provides for creating and maintaining a satisfactory lien upon inventory not so warehoused.*" (Emphasis supplied)

Regulation 123.7 (a) in reference to disaster loans reads as follows:

> "(a) The Small Business Act, as amended, contains no specific requirements with respect to collateral as security for a disaster loan, nor has SBA established any firm rule in regard to collateral. However, SBA requires applicants to pledge what-

> ever collateral they can furnish. SBA will give consideration the moral risk involved and to evidence showing a reasonable propsect that the loan will be repaid."

Such regulations have the same effect, in this situation, as the legislative Act itself. Since regulation #122.17(f) expressly incorporates the state law by reference, it is difficult to understand how petitioner is allowed to maintain the inconsistent position that it does in this case.

The loan in question was a disaster loan made pursuant to Section 636(b) of the Act, in which the Congress expressly empowered Small Business Administration to make such loans either "directly or in cooperation with banks or other lending institutions on an immediate or deferred basis." Since this Court does not give advisory opinions in advance, it seems indeed strange to expect "banks or other lending institutions" to participate in a loan transaction in which nobody knows in advance what covenants will be included in or excluded from the security instruments evidencing the same, or what standards to use to be sure the borrower is legally competent to contract.

Finally, this Court cannot ignore the fact that the contract documents involved in this case were executed in reference to Texas law, absorbed as it were as federal rules, there being none other available for determining the form or substance of the security instruments or competency of the borrower.

The note in question is a community debt of Delbert L. Yazell and his wife, who is the respondent, and the

property covered by the chattel mortgage to secure the note was community property (R.46).

Respondent's disabilities of coverture have not been removed.[1]

The note made the basis of this suit was secured by a chattel mortgage, both dated July 10, 1957, executed at Lampasas, Texas by respondent[2] and her husband and

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[1]Art. 4626, R.C.S.T. 1925, provided a method by which Respondent could have, but never did, free herself of the legal restrictions on transacting business. It read as follows:

"Any married woman, with the consent of and joined by her husband, may apply by written petition addressed to the district court of the county in which she may desire to transact business for judgment or orders of the said court removing her disabilities of coverture and declaring her feme sole for mercantile and trading purposes; such petition shall set out the causes which make it to the advantage of said married women to be so declared feme sole, and shall be led and docketed as in other cases, and at any time thereafter the district court may, in term time, take up and hear said petition and evidence in regard thereto. If upon a hearing of said petition and evidence relating thereto, it appears to the court that it would be to the advantage of the woman applying, then said court shall enter its decree declaring said married woman feme sole for mercantile or trading purposes, and thereafter she may, in her own name, contract and be contracted with, sue and be sued, and all of her separate property not exempt from execution under the laws of Texas shall thereafter be subject to her debts and liable under execution therefore, and her contracts and obligations shall be binding on her."

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[2]There are several valid reasons for requiring the signature of the wife that are perfectly consistent with the concept of her non-personal liability in situations like this; an ilustrative example is the preclusion of possible future claims of separate-estate ownership of the property by the wife.

they were parts of the same transaction (Exhibit A, R. 3,25).

The chattel mortgage complied with the laws of the State of Texas as to substance and form. It was acknowledged before a Notary Public by respondent as a married woman on July 18, 1957, in full compliance with Texas law (R.35).

By express language (R.29,30) the chattel mortgage was executed in reference to Art. 4000, Revised Civil Statutes of Texas, as amended,[3] and thereby expressly authorized mortgagors to encumber the merchandise daily exposed for sale to the retail trade. The chattel mortgage also contains appropriate language to maintain the stock of merchandise in compliance with said Texas statute at all times (R.25,26).

The provisions of the Small Business Act of 1953 are clear, but they are no more so than its legislative history; the express incorporation of local property laws in petitioner's regulations is positive, but no more so than the

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[3]Art. 4000, Revised Civil Statutes of Texas reads as follows:

"Every mortgage, deed of trust, or other form of lien attempted to be given by the owner of any stock of goods, wares or merchandise, daily exposed to sale, in parcels, in the regular course of business of such merchandise, and contemplating a continuance of the possession of said goods by said owner, shall be deemed fraudulent and void; provided that this Article shall not apply to farm products when offered for sale by the producer; and further provided that this Article shall not apply to any mortgage, deed of trust or other form of lien given to secure the purchase price of any such goods, wares or merchandise, except as to all retail sales made in good faith in the regular course of business."

express incorporation of the terms of Texas Property laws in and as a part of the contract on which petitioner sues in this case. The facts in this case are undisputed; those facts conclusively establish the basis for estoppel of petitioner, for holding it to the terms of its own regulations, its own interpretation of the Act, and to the express terms of its own contract. Surely the trial court judgment for respondent must be affirmed.

III.

THE JUDGMENT SHOULD BE AFFIRMED BECAUSE THE PARTIES TO THE TRANSACTION (PETITIONER BEING ONE) CONTRACTED IN REFERENCE TO TEXAS LAW INSOFAR AS THE VALIDITY OF THE NOTE AND CHATTEL MORTGAGE WERE CONCERNED.

This point was discussed in the preceding argument as bearing upon the administrative interpretation of the Act by petitioner, and those comments will not be repeated here except by reference. Based upon that contract, petitioner sold all of the community property covered by the mortgage and applied the proceeds to the note in question. Petitioner has recovered a deficiency judgment against the husband, the lien of which extends to all property of the husband, including all of respondent's interest in any community property[4] owned or to be acquired by respondent and husband. Thus it is seen that neither petitioner's contracts nor remedies have been impaired.

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[4]"All such community property is reached by the judgment against the husband, it being unnecessary to name the wife in the judgment or the execution. *Gabb v. Boston*, 109 Tex. 193 SW 137; *Adams v. Bartell*, 102 SW 779 (782), err. ref.

IV.

THE TEXAS LAW OF COVERTURE IS APPROPRIATE AS THE FEDERAL RULE APPLICABLE TO THIS CASE, WHETHER IT BE ADOPTED BY LEGISLATIVE ACT, OR BY THE FEDERAL COURT.

A. THE TEXAS RULE OF COVERTURE

In general a Texas wife is not personally liable for community debt, and her separate estate cannot be taken (absent a mortgage thereon given by her) in satisfaction thereof. Arts. 4623 and 4626, Revised Civil Statutes of Texas; *Red River National Bank. v. Ferguson,* 109 Tex. 287, 206 SW 923 (1918); *Poe v. Hall,* 241 SW 708, 712; *Gooding v. Dove,* 262 SW 560.

The Texas Legislature has amended these statutes since the note in question was signed. Art. 4623 was repealed by Acts. 1963, 58th Leg., p. 1188, Cha. 472 # 4, the repeal becoming effective on August 23, 1963; Art. 4626 was amended by Acts 1963, 58th Leg. p. 1188, Ch. 472 likewise effective on August 23, 1963. The amended statutes reads:

> "A married woman shall have the same powers and capacity as if she were a feme sole, in her own name, to contract and be contracted with, sue and be sued, and all her separate property, her personal earnings and the revenues from her separate estate which is not exempt from execution under the laws of Texas shall thereafter be subject to her debts and be liable therefor, and her contracts and obligations shall be binding on her."

Of course, amendment of the statutes in 1963 would not alter the legal liability arising under the law as it

existed in 1957 at the time the note was signed and modified, but in any event the amendment does not abrogate the rule applicable to this case. The amendment authorizes a married woman to contract *"in her own name"* and create personal liability subjecting her separate estate, her personal earnings and the revenue from her separate estate to liability for such contracts made "in her own name" without her husband. It is believed that the amendment will be so construed, thus confining such personal liability to those instances where the married woman has contracted *in her own name* rather than simply joining, as wife, the husband in his contracts. This construction can be predicted with confidence because any other would alter or impair the exclusive control and management of the community estate by the husband, subjects entirely outside the scope of such amendments.

B. SUCH COVERTURE RULE IS APPROPRIATE AS THE FEDERAL RULE GOVERNING LOANS MADE IN TEXAS TO RESIDENTS OF TEXAS

The Texas coverture rule has been applied by federal courts as the appropriate federal rule in at least two earlier reported cases. *United States v Belt* 88F. Supp. 510 (1950, U.S.D.C.S.D. Tex.), and *Texas Water Suply Corp. v Reconstruction Finance Corp.* 204F 2d 190 (5th Cir. 1953). The federal lending program involved was not noticeably affected by the decisions. The important thing is that Congress has not thought that its declared policy of lending to private enterprise has been hampered by the federal agencies long-established use of state property laws for determining the form and substance of its security instru-

ments, and the legal competency of its borrowers. Such practice had been followed by Reconstruction Finance Corporation for more than twenty years when Congress enacted The Small Business Act of 1953, yet not a single change was made in that regard.

There is not one iota of evidence in this case that SBA's use of local property laws for determining validity of the security instruments it takes in the state where the loan is made has created any uncertainty, or interfered with its lending program, or impeded the declared public policy. In *Bumb, Trustee v United States,* 276 F 2d 729, the Court of Appeals for the 9th Circuit answered the same unsupported argument as follows: The Court there said,

> "We are unable to see in what manner local requirements governing the creation of a valid security interest interfere with federal policy to any greater degree than the requirement that the prospective borrower from the Small Business Administration meet other reasonable requirements before he becomes a debtor of the United States."

Moreover, it would appear that petitioner's appeal for establishment of a uniform system of federal property law separate and apart from that of the states where it operates, and which it has been using thus far, should be addressed to Congress before its use, instead of coming to this Court after the fact of its own selection of the state laws.

Neither does the judgment in this case interfere with

the relationship of the federal government with this respondent; it simply declares the rights of the parties as they existed at the time of contracting. Surely the rights of debtor-creditor parties would be fixed as of the time of the contract, whether there ever is a body of federal property law separate from state rules or not.

The claim that the judgment in this case discriminates against married women is as incorrect as it is far-fetched. Married women could engage in business in Texas in their own names before the 1963 amendment of the Texas Statute as well as since that event. Respondent could have qualified to do so had she desired, but since she did not do so, petitioner should justly be held to its own bargain of non-personal liability of respondent.

This case does not concern the federal revenues, commercial paper issued by the United States, its procurement policies, the national banking system, or any other area of activity where state and federal rules are incompatible. Neither does use of the community property rule involved in this case defeat, limit, impede, or burden any remedy of petitioner. It concerns only the question of validity—the legal liability of respondent as fixed by and as the result of the contract in question.

Coverture remains a useful and essential community property rule in Texas, and no dual rule should be imposed without most careful and deliberate forethought, more especially since no need or utility is shown therefor. The mischief that can result from doing so is perfectly illustrated by the experience of the Court of Appeals for

the 6th Circuit. In *Fetter V. United States,* 269 F 2nd 467, (6th Cir. 1959) it held that the wife was *not personally* liable on a FHA note she signed with her husband. In *United States V Helz,* 314 F 2nd 301, (6th cir. 1963) it held that she was. Both cases are being criticized, largely for what appears to be *unintended results.* See *Creditors' Rights* by Herbert N. Weingarten, in *Wayne Law Review* Vol. 10, p. 184 (1963). That court would have been far wiser, it seems to us, to have followed, in each of those cases, the course taken by this Court in *Reconstruction Finance Corp. V Beaver County,* 328 US 204, 66 S. Ct. 992 (1946), where this Court said,

> "We think the Congressional purpose can best be accomplished by application of settled state rules as to what constitutes real property as long as it is plain, as it is here, that the state rules do not effect a discrimination against the government, or patently run counter to the terms of the Act. Concepts of real property are deeply rooted in state traditions, customs, habits and laws."

We submit that the analogy to this case involving the community property laws as it does, is most apt.

CONCLUSION

The judgement should be affirmed and respondent respectfully so prays.

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SUPREME COURT OF THE UNITED STATES

No. 10.—October Term, 1965.

United States, Petitioner, *v.* Ethel Mae Yazell.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[January 17, 1966.]

Mr. Justice Fortas delivered the opinion of the Court.

This case presents an aspect of the continuing problem of the interaction of federal and state laws in our complex federal system. Specifically, the question presented is whether, in the circumstances of this case, the Federal Government, in its zealous pursuit of the balance due on a disaster loan made by the Small Business Administration, may obtain judgment against Ethel Mae Yazell of Lampasas, Texas. At the time the loan was made, Texas law provided that a married woman could not bind her separate property unless she had first obtained a court decree removing her disability to contract.[1] Mrs. Yazell had not done so. At all relevant times she was a beneficiary of the peculiar institution of coverture which is now, with some exceptions, relegated to history's legal museum.

The impact of the quaint doctrine of coverture upon the federal treasury is therefore of little consequence. Even the Texas law which gave rise to the difficulty was repealed in 1963.[2] The amount in controversy in this

[1] Vernon's Ann. Rev. Civ. Stat., Art. 4626. This section, as amended by Acts 1963, 58th Leg., p. 1188, c. 472, § 6, now gives to Texas wives the capacity to contract. Under old Art. 4626 a married woman could have her disability removed.

[2] See note 1, *supra*.

extensive litigation, about $4,000, is important only to the Yazell family. But the implications of the controversy are by no means minor. Using *Clearfield Trust Co.* v. *United States*, 318 U. S. 363, as its base, the Government here seeks to occupy new ground in the inevitable conflict between federal interest and state law. The Government was rebuffed by the trial and appellate courts. We hold that in the circumstances of this case, the state rule governs, and, accordingly, we affirm the decision of the United States Court of Appeals for the Fifth Circuit, 334 F. 2d 454.[3]

Reference in some detail to the facts of this case will illuminate the problem.[4] Delbert L. Yazell operated in Lampasas, Texas, a small shop to sell children's clothing. The shop was called Yazell's Little Ages. Occasionally, his wife, Ethel Mae, assisted in the business. The business, under Texas law, was the community property of husband and wife, who, however, were barred by the coverture statute from forming a partnership. *Dillard* v. *Smith*, 146 Tex. 227, 205 S. W. 2d 366, 367. A disastrous flood occurred in Lampasas on May 12, 1957. The stock of Yazell's Little Ages was ruined. Its fixtures were seriously damaged.[5]

The Small Business Administration had a regional office in Dallas, Texas. As of December 31, 1963, the

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[3] The Court of Appeals by a vote of two to one affirmed the decision of the District Court in favor of the wife, based upon the Texas law of coverture. The action was instituted by the United States to recover the balance due on a note of approximately $12,000, secured by a chattel mortgage. The note was signed by both husband and wife. The mortgage had been foreclosed, the pledged assets sold, and a deficiency judgment was rendered against the husband in this same action. No appeal was taken by the husband.

[4] In the discussion which follows, as specifically indicated by reference to "SBA file," we have occasionally referred to the official file of the Small Business Administration on the Yazell loan to supplement the record with facts which disclose the agency's practice.

[5] SBA file.

agency had outstanding in Texas, generally under the supervision of its Dallas regional office, 1,363 business loans and 4,172 disaster loans, aggregating more than $60,000,000.[6] Upon the occurrence of the Lampasas flood, the SBA opened a Disaster Loan Office in Lampasas, under the direction of the Dallas office.[7]

On June 10, 1957, Mr. Yazell conferred with a representative of the SBA about a loan to enable him to cope with the disaster to his business. After a careful, detailed but commendably prompt investigation, the head of SBA's Disaster Loan Office wrote Mr. Yazell on June 20, 1957, that authorization for a loan of $12,000 had been received. Yazell was informed that the loan would be made upon his compliance with certain requirements. He was told that a named law firm in Lampasas had been employed by the SBA to assist him in complying with the terms of the authorization.[8]

Yazell and his wife "doing business as" Yazell's Little Ages then signed a note in the amount of $12,000, payable to the order of SBA in Dallas at the rate of $120 per month including 3% interest. On the same day they also executed a chattel mortgage on their stock of merchandise and their store fixtures. By express reference to Article 4000 of the Revised Civil Statutes of Texas, the chattel mortgage exempted from its coverage retail sales made from the stock. The chattel mortgage was accompanied by a separate acknowledgment of Mrs. Yazell before a notary public, which was required by Texas law as a part of the institution of coverture. The notary attested, in the words of the applicable Texas statute, that "Ethel Mae Yazell, wife of Delbert L. Yazell . . . whose name is subscribed to the [chattel mortgage] . . . having been examined by me privily and

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[6] Brief of the United States, p. 12.

[7] SBA file.

[8] SBA file.

apart from her husband . . . acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same. . . ." See Vernon's Ann. Rev. Civ. Stat., Art. 6608. See also Art. 1300, 4618 (Supp. 1964), 6605. These statutes all relate to conveyances of the marital homestead.

The note, chattel mortgage and accompanying documents were in due course sent to the Dallas office of SBA. Both the Lampasas law firm engaged by SBA to assist Yazell, and the Acting Regional Counsel of SBA certified that "all action has been taken deemed desirable . . . to assure the validity and legal enforceability of the Note." Thereafter, the funds were made available to Yazell pursuant to the terms of the loan.[*]

From the foregoing, it is clear (1) that the loan to Yazell was individually negotiated in painfully particularized detail, and (2) that it was negotiated with specific reference to Texas law including the peculiar acknowledgment set forth above. None of the prior cases decided by this Court in which the federal interest has been held to override state law resembles this case in these respects; the differences are intensely material to the resolution of the issue presented.

Next, it seems clear (1) that the SBA was aware and is chargeable with knowledge that the contract would be subject to the Texas law of coverture; (2) that both the SBA and the Yazells entered into the contract without any thought that the defense of coverture would be unavailable to Mrs. Yazell with respect to her separate property as provided by Texas law; and (3) that, in the circumstances, the United States is seeking the unconscionable advantage of recourse to assets for which it did not bargain. These points will be briefly elaborated before we reach the ultimate issue: whether, despite all

[*] SBA file.

of the foregoing, some "federal interest" requires us to give the United States this advantage.

It will be noted that the transaction was custom-tailored by officials of SBA located in Dallas and Lampasas, Texas, and undoubtedly familiar with Texas law. It was twice approved by Texas counsel who certified that "all action has been taken deemed desirable" even though no effort was made to cause Mrs. Yazell to have her incapacity removed under Texas law.[10] In at least two decisions since 1950, federal courts had applied the Texas law of coverture in actions under federal statutes.[11] At no time does it appear that the SBA made the slightest suggestion to the Yazells or their SBA-appointed counsel that it intended to enforce the contract against Mrs. Yazell's separate property.[12] The forms used, although specifically adapted to this transaction and to Texas law, made no reference to such an intent, and it is either probable or certain that no such intent existed. As stated above, the SBA now has more than 5,000 loans outstanding in Texas.[13] The Solicitor

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[10] See note 1, *supra.*

[11] *United States* v. *Belt,* 88 F. Supp. 510 (D. C. S. D. Tex.) (suit held barred by coverture); *Texas Water Supply Corp.* v. *Reconstruction Finance Corp.,* 204 F. 2d 190 (C. A. 5th Cir.) (case held within an exception to coverture).

[12] SBA file.

[13] The Ninth Circuit, in *Bumb* v. *United States,* 276 F. 2d 729 (C. A. 9th Cir.), aptly observed in response to a claim by the Small Business Administration that the "need for uniformity" excused it from complying with a California "bulk sales" statute requiring notice of intent to mortgage:

"It is true that the Small Business Administration operates throughout the United States, but such fact raises no presumption of the desirability of a uniform federal rule with respect to the validity of chattel mortgages in pursuance of the lending program of the Small Business Administration. The largeness of the business of the Small Business Administration offers no excuse for failure to comply with reasonable requirements of local law, which are designed

General informed the Court that the SBA, in conformity with the general practice of government lending agencies, requires that the signature of the wife be obtained as a routine matter.[14] If it had been intended that the result now sought by the Government would obtain, simple fairness as well as elementary craftsmanship would have dictated that in a Texas agreement the wife be advised, at least by formal notation, that she was, in the opinion of SBA binding her separate property, despite Texas law to the contrary. Again, it must be emphasized that this was a custom-made, hand-tailored, specifically negotiated transaction. It was not a nation-wide act of the Federal Government, emanating in a single form from a single source.[15]

We now come to the basic issue which this case presents to this Court. Is there a "federal interest" in collecting the deficiency from Mrs. Yazell's separate property which warrants overriding the Texas law of coverture? Undeniably there is always a federal interest to collect moneys which the Government lends. In this case, the federal interest is to put the Federal Government in position to levy execution against Mrs. Yazell's separate property, if she has any, for the unpaid balance

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to protect local creditors against undisclosed action by their local debtors which impair the value of their claims. It must be assumed that the Small Business Administration maintains competent personnel familiar with the laws of the various states in which it conducts business, and who are advised of the steps required by local law in order to acquire a valid security interest within the various states." *Id.*, at 738.

[14] Brief for the United States, p. 11.

[15] Contrast *Clearfield Trust Co.* v. *United States*, 318 U. S. 363. Compare also *United States* v. *Helz*, 314 F. 2d 301 (C. A. 6th Cir.), arising under the Federal Housing Administration, 12 U. S. C. § 1702 *et seq.*, which issues separate forms for each State but does not negotiate with individual applicants. See *United States* v. *View Crest Garden Apts., Inc.*, 268 F. 2d 380 (C. A. 9th Cir.), cert. denied, 361 U. S. 884.

of the $12,000 disaster loan after the stock of merchandise and fixtures of the store have been sold, after any other community property subject to sale has been liquidated, after any other community property has been sold, and after Mr. Yazell's leviable assets have been exhausted. The desire of the Federal Government to collect on its loans is understandable. Perhaps even in the case of a disaster loan, the zeal of its representatives may be commended. But this serves merely to present the question—not to answer it. Every creditor has the same interest in this respect; every creditor wants to collect.[16] The United States, as sovereign, has certain preferences and priorities,[17] but neither Congress nor this Court has ever asserted that they are absolute. For example, no contention will or can be made that the United States may by judicial fiat collect its loan with total disregard of state laws such as homestead exemptions.[18] Accordingly, generalities as to the paramountcy of the federal interest do not lead inevitably to the result the Government seeks. Our problem remains: whether in connection with an individualized, negotiated contract, the Federal Government may obtain a preferred right which is not provided by statute or specific agency regulation, which was not a part of its bargain, and which requires overriding a state law dealing with the intensely local interests of family property and the protection (whether or not it is up-to-date or even welcome) of married women.

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[16] In this case, the Yazells' general creditors collected about 20% of their claims.

[17] For example, Congress has provided for preference in the case of debts owed the United States on tax delinquencies. See 26 U. S. C. §§ 6321, 6323 (1964 ed.); 11 U. S. C. § 104 (a) (4) (1964 ed.). 31 U. S. C. § 191 (1964 ed.) also provides a priority for the United States in some situations involving ordinary debts. See Kennedy, The Relative Priority of the Federal Government: The Pernicious Career of the Inchoate and General Lien, 63 Yale L. J. 905 (1954).

[18] See pp. 12–13, *infra*.

The Government asserts that this overriding federal interest can be found in the unlimited right of the Federal Government to choose the persons with whom it will contract, citing *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113, which is remote from the issue at hand.[19] Realistically, in terms of Yazell's case, this has nothing to do with our problem: The loan was made to enable Yazell to reopen the store after the disaster of the flood. The SBA chose its contractors with knowledge of the limited office of Mrs. Yazell's signature under Texas law. That knowledge did not deter them. If they had "chosen" Mrs. Yazell as their contractor in the sense that her separate property would be liable for the loan, presumably they would have said so, and they would have proceeded with the formalities necessary under Texas law to have her disability removed.[20] In all reality, the assertion that this case involves the right of the United States to choose its beneficiaries cannot determine the issue before us.[21]

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[19] The Government relies upon *Perkins*, at p. 127, for the proposition that the United States has "The unrestricted power . . . to determine those with whom it will deal." Brief for the United States, p. 9. *Perkins* had nothing to do with the question of the power of the United States to override state law declaring the incapacity of persons to contract. The Court there held that private companies alleging their right as potential bidders for government contracts lacked standing to challenge a federal statute requiring federal procurements contracts to include a minimum wage stipulation. The Government quotes the decision out of context, omitting the following italicized words: the Court stated that "*Like private individuals and businesses*, the Government enjoys the unrestricted power . . . to determine those with whom it will deal, and to fix the terms and conditions upon which it will make needed purchases." Mrs. Yazell would subscribe to *that* proposition—indeed, the brunt of her case is that the Government, in entering ordinary commercial contracts, should be treated "like private individuals and businesses."

[20] See note 1, *supra*.

[21] It is worth noting that in the only situation where the United States' power to choose its contractors might arise—where a mar-

This case is not a call to strike the shackles of an obsolete law from the hands of a beneficent Federal Government, nor is it a summons to do battle to vindicate the rights of women. It is much more mundane and commercial than either of these. The issue is whether the Federal Government may voluntarily and deliberately make a negotiated contract with knowledge of the limited capacity and liability of the persons with whom it contracts, and thereafter insist, in disregard of such limitation, upon collecting (a) despite state law to the contrary relating to family property rights and liabilities, and (b) in the absence of federal statute, regulation or even any contract provision indicating that the state law would be disregarded.

The institution of coverture is peculiar and obsolete. It was repealed in Texas after the events of this case. It exists, in modified form, in Michigan.[22] But the Government's brief tells us that there are 10 other States which limit in some degree the capacity of married women to contract.[23] In some of these States, such as California, the limitations upon the wife's capacity and responsibility are part of an ingenious, complex, and highly purposeful distribution of property rights between husband and wife, geared to the institution of community property

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ried woman has separate property in respect of which she seeks or the Government offers a loan—the Texas law expressly provided for her power to contract and to bind her separate property. Vernon's Ann. Rev. Civ. Stat., Art. 4614.

[22] Mich. Stat. Ann. §§ 26.161, 26.181, 26.182, 26.183. See *Koengeter* v. *Holzbaugh*, 332 Mich. 280; Weingarten, Creditors' Rights, 10 Wayne L. Rev. 184 (1963).

[23] Brief for the United States, p. 15, n. 10. The States are, in addition to Texas and Michigan: Alabama, Arizona, California, Florida, Georgia, Idaho, Indiana, Kentucky, Nevada, and North Carolina. With the exception of Michigan, see n. 22, *supra*, none of these States other than Texas has a coverture rule applicable to facts such as those presented by this case.

and designed to strike a balance between efficient management of joint property and protection of the separate property of each spouse.[24] It is an appropriate inference from the Government's brief that its position is that the Federal Government, in order to collect on a negotiated debt, may override all such state arrangements despite the absence of congressional enactment or agency regulation or even any stipulation in the negotiated contract or any warning to the persons with whom it contracts.[25]

We do not here consider the question of the constitutional power of the Congress to override state law in these circumstances by direct legislation [26] or by appropriate authorization to an administrative agency coupled with suitable implementing action by the agency.[27] We decide

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[24] In California a wife has full capacity to contract. Calif. Civ. Code § 158. Her separate property is liable for her own debts, as are her earnings. Calif. Civ. Code §§ 167, 171. However, in connection with California's community property law governing the management and control of community property, see Calif. Civ. Code (Supp. 1964) §§ 172, 172a, the community property is generally not subject to the debts of the wife. Calif. Civ. Code § 167. See also Ariz. Rev. Stat. § 25–214; Nev. Rev. Stat. § 123.230.

[25] The Government's argument, if accepted by this Court, would cast doubt, in addition, on state laws preventing wives from conveying realty without the consent of their husbands—see, *e. g.*, Code of Ala., Tit. 34, § 73; Fla. Stat. Ann. (Supp. 1964) § 708.08; Ind. Stat. Ann. § 38–102; Ky. Rev. Stat. § 404.020 (executory sales contract); Gen. Stat. N. C. § 52–2—or from acting as guarantors or sureties—see, *e. g.*, Ga. Code Ann. § 53.503; Ky. Rev. Stat. § 404.010.

[26] See, *e. g.*, *United States* v. *Bess*, 357 U. S. 51, which held that the exemptions from execution to satisfy federal tax liens provided in § 3691 of the Internal Revenue Code of 1939 (now 26 U. S. C. § 6334) are exclusive of state exemptions.

[27] See, *e. g.*, *United States* v. *Shimer*, 367 U. S. 374 (Pennsylvania rule precluding mortgagee who buys mortgaged property at foreclosure from seeking deficiency judgment held inconsistent with scheme of Veterans Administration regulations under which mortgage issued).

only that this Court, in the absence of specific congressional action, should not decree in this situation that implementation of federal interests requires overriding the particular state rule involved here. Both theory and the precedents of this Court teach us solicitude for state interests, particularly in the field of family and family-property arrangements. They should be overridden by the federal courts only where clear and substantial interests of the national government, which cannot be served consistently with respect for such state interests, will suffer major damage if the state law is applied.

Each State has its complex of family and family-property arrangements. There is presented in this case no reason for breaching them. We have no federal law relating to the protection of the separate property of married women. We should not here invent one and impose it upon the States, despite our personal distaste for coverture provisions such as those involved in this case. Nor should we establish a principle which might cast doubt upon the effectiveness in relevant types of federal suits of the laws of 11 other States relating to the contractual positions of married women, which, as the Government's brief warns us, would be affected by our decision in the present case. Clearly, in the case of these SBA loans there is no "federal interest" which justifies invading the peculiarly local jurisdiction of these States, in disregard of their laws, and of the subtleties reflected by the differences in the laws of the various States which generally reflect important and carefully evolved state arrangements designed to serve multiple purposes.

The decisions of this Court do not compel or embrace the result sought by the Government. None of the cases in which this Court has devised and applied a federal principle of law superseding state law involved an issue arising from an individually negotiated contract. None

of these cases permitted federal imposition and enforcement of liability on a person who, according to state law, was not competent to contract. None of these cases overrode state law in the peculiarly state province of family or family-property arrangements.[28]

This Court's decisions applying "federal law" to supersede state law typically relate to programs and actions which by their nature are and must be uniform in character throughout the Nation. The leading case, *Clearfield Trust Co.* v. *United States*, 318 U. S. 363, involved the remedial rights of the United States with respect to federal commercial paper. *United States* v. *Allegheny County*, 322 U. S. 174, was treated by the Court as involving the liability of property of the United States to local taxes.[29] *D'Oench, Duhme & Co.* v. *Federal Deposit Ins. Corp.*, 315 U. S. 447, involved the rights

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[28] On the contrary, in *De Sylva* v. *Ballantine*, 351 U. S. 570, the Court applied state law to define "children" although the issue arose in connection with the right to renew a copyright—a peculiarly federal area. Cf. *Reconstruction Finance Corp.* v. *Beaver County*, 328 U. S. 204; *Commissioner* v. *Stern*, 357 U. S. 39. We do not regard *Wissner* v. *Wissner*, 338 U. S. 655, as an exception. There California sought to apply its community property rule that a wife has a half interest in her husband's life insurance if the premiums come out of community property (his earnings), in derogation of the federal statutory policy that soldiers have an absolute right to name the beneficiary of their National Service Life Insurance. The Court held that the California rule would directly have undercut congressional intent with respect to the Federal Government's generalized, nationwide insurance program.

[29] The Court held that a state tax rule under which movable machinery was part of the realty of a manufacturer for purposes of an ad valorem property tax could not be applied so as to subject a manufacturer renting the machinery from the United States to such an enhancement of the value of his realty. The Court held that the title to the machinery was in the United States, and was effective to protect the machinery from local taxes. But compare *Reconstruction Finance Corp.* v. *Beaver County*, 328 U. S. 204.

of the FDIC as an insurer-assignee of a bank as against the maker of a note given the bank on the secret understanding it would not be called for payment. The bank deposit insurance program is general and standardized. In all relevant aspects, the terms are explicitly dictated by federal law.[30] The Court held that FDIC was entitled to a federal rule protecting it against misrepresentations as to the financial condition of the banks it insures, accomplished by secret arrangements inconsistent with the policy of the applicable federal statutes.

On the other hand, in the type of case most closely resembling the present problem, state law has invariably been observed. The leading case is *Fink* v. *O'Neil*, 106 U. S. 272. There the United States sought to levy execution against property defined by state law as homestead and exempted by the State from execution. This Court held that Revised Statutes § 916, now Rule 69 of the Federal Rules of Civil Procedure, governed, and that the United States' remedies on judgments were limited to those generally provided by state law.[31] These homestead exemptions vary widely. They result in a diversity of rules in the various States and in a limitation

[30] The statute involved in *D'Oench, Duhme* is now the Federal Deposit Insurance Act, 12 U. S. C. § 1811 *et seq.* (1964 ed.).

[31] See also *Custer* v. *McCutcheon*, 283 U. S. 514. Rule 69 provides that procedure on execution shall be "in accordance with the practice and procedure of the state in which the district court is held . . . except that any statute of the United States governs to the extent that it is applicable." With the one exception of federal tax cases, see n. 26, *supra*, state execution procedure seems to be applied without question, even in suits by the United States. See, *e. g.*, *United States* v. *Harpootlian*, 24 F. 2d 646 (C. A. 2d Cir.) (applying state law on the time within which examination can be had of a judgment debtor after an execution against him is returned unsatisfied, over an objection by the Government that this was an improper application of a statute of limitations to the sovereign); *United States* v. *Miller*, 229 F. 2d 839 (C. A. 3d Cir.) (Pennsylvania prohibition of garnishment of future debts of garnishee to debtor).

upon the power of the Federal Government to collect which is comparable to the coverture limitation.[32] The purpose and theory of the two types of limitations are obviously related.[33] Another illustration of acceptance of divergent and limiting state laws is afforded by *Reconstruction Finance Corp.* v. *Beaver County*, 328 U. S. 204. In that case this Court held that the state classification of property owned by the Recontruction Finance Cor-

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[32] In Texas, the value of the homestead that is exempt from execution is $5,000 (or 200 acres, if the homestead is not in a town), Vernon's Ann. Rev. Civ. Stat., Art. 3833; Tex. Const., Art. 16, §§ 50, 51; in Tennessee and Maine it is $1,000, Tenn. Const., Art. 11, § 11; Me. Rev. Stat. Ann., Tit. 14, §§ 4551, 4552; in California, it is $15,000 for the head of a family, $7,500 for all others, Calif. Civ. Code, §§ 1240, 1260 (Supp. 1964); cf. Calif. Const., Art. 17, § 1. If Mrs. Yazell's separate property were a homestead under Texas law, she might be able to defeat execution on the judgment that will enter against her in this suit to a far greater degree than some other debtor to the SBA could who happened to reside in Tennessee or Maine; and a Californian would do better even than Mrs. Yazell.

Other exemptions from execution vary similarly. For example, the same four States provide for detailed personal exemptions. In Texas, a family is exempt not only as to its homestead, but also its furniture, cemetery lot, implements of husbandry, tools and books of a trade, family library and pictures, five cows and their calves, two mules, two horses, one wagon, one carriage, one gun, 20 hogs, 20 sheep, harness, provisions and forage for home consumption, current wages, clothing, 20 goats, 50 chickens, 30 turkeys, 30 ducks, 30 geese, 30 guineas, and one dog. A somewhat less extensive list is provided for persons who are not constituents of a family. Vernon's Ann. Rev. Civ. Stat., Art. 3832, 3835. Cf. also Me. Rev. Stat. Ann., Tit. 14, § 4401; Calif. Code, Civ. Proc., §§ 690–690.22 (1955 ed. and Supp. 1964). Texas also has other special protections, including a provision applicable to ferrymen, saving to them their ferryboat and tackle, Vernon's Ann. Rev. Civ. Stat., Art. 3836.

[33] Rule 64, adopting state provisional remedies for security in advance of judgment, can lead to the same kind of diversity as does Rule 69. Cf. *DeBeers Consolidated Mines, Ltd.* v. *United States*, 325 U. S. 212. State provisional remedies vary greatly. See 7 Moore's Fed. Prac. ¶ 64.04 [3].

poration as "real property" for tax purposes would prevail in determining whether the property was within the class of property as to which Congress had waived the federal exemption from local taxation.

Generally, in the cases applying state law to limit or condition the enforcement of a federal right, the Court has insisted that the state law is being "adopted" as the federal rule. Even so, it has carefully pointed out that this theory would make it possible to "adopt," as the operative "federal" law, differing laws in the different States, depending upon the State where the relevant transaction takes place.[34]

Although it is unnecessary to decide in the present case whether the Texas law of coverture should apply *ex proprio vigore*—on the theory that the contract here was made pursuant and subject to this provision of state law—or by "adoption" as a federal principle, it is clear that the state rule should govern. There is here no need for uniformity. There is no problem in complying with state law; in fact, SBA transactions in each State are

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[34] "In our choice of the applicable federal rule we have occasionally selected state law." *Clearfield Trust Co.* v. *United States*, 318 U. S. 363, 367. The Court observed in *Clearfield* that the difficulty of determining which state rule to apply could be a persuasive argument in favor of a federal rule. *Id.*, at 367. No such difficulty exists here, of course.

In *Royal Indemnity Co.* v. *United States*, 313 U. S. 289, cited by the Government for the proposition that "the rights of the United States under contracts entered into as part of an authorized nation-wide program are to be determined by Federal and not by State law," Brief for the United States, p. 7, the Court while insisting that "the rule governing the interest to be recovered as damages for delayed payment of a contractual obligation to the United States is not controlled by state statute or local common law," *id.*, at 296, nonetheless held that the statutory rate prevailing in the State where the obligation was undertaken and to be performed was a suitable one for adoption by the federal courts. Cf. also *Board of Commissioners* v. *United States*, 308 U. S. 343.

specifically and in great detail adapted to state law.[35] There is in this case no defensible reason to override state law unless, despite the contrary indications in *Fink* v. *O'Neil* and elsewhere as has been set forth, we are to take the position that the Federal Government is entitled to collect regardless of the limits of its contract and regardless of any state laws, however local and peculiarly domestic they may be.

The decision below is

Affirmed.

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[35] The Financial Assistance Manual of the Small Business Administration, SBA–500, is replete with admonitions to follow state law carefully. Thus § 401.03 reads:

"*Compliance with Applicable Laws.* When the United States disburses its funds, it is exercising a constitutional function or power and its rights and duties are governed by Federal rather than local law. However, it is frequently necessary, in the obtaining of a marketable title or enforceable security interest in property, to follow local procedural requirements and statutes. Accordingly, care should be used in following or meeting all applicable requirements and statutes of the State in which the property is located, including the filing and refiling, recording and re-recording of any documents."

See also, *e. g.*, §§ 401.06, 402.04, 403.03, 404.01, 404.02, 406.02, 407.03, 407.04 ("State laws vary as to the dominion a lender must exercise over assigned accounts receivable . . . . In drafting servicing provisions . . . counsel should carefully consider the applicable laws of the State . . . ."), 408.01, 410.08 ("In order to guard against this Agency's liability for payment of insurance premiums under the standard mortgagee clause in any state the law of which . . . makes the mortgagee so liable, the regional director shall . . . ."), 706.01. Section 1008.03 authorizes a Regional Director of SBA, "In instances where a disaster area is distantly located from the Regional office and where speed and economy of administration make such procedure advisable," to recommend to the General Counsel that "local counsel be appointed and that he be authorized to rely on such counsel for all legal matters and closing opinions." See, in addition, 13 CFR (1965 Pocket Supp.) § 122.17.

SUPREME COURT OF THE UNITED STATES

No. 10.—October Term, 1965.

United States, Petitioner, *v.* Ethel Mae Yazell.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[January 17, 1966.]

Mr. Justice Harlan, concurring.

I join the Court's opinion with a single qualification, namely, that I place no reliance on any of the particularities of the negotiations between the parties respecting this loan. In my view the conclusion that Texas law governs the issue before us is amply justified by the Court's appraisal of the competing state and federal interests at stake, irrespective of whether the parties negotiated with specific reference to Texas law.

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[January 17, 1966.]

Mr. Justice Black, with whom Mr. Justice Douglas and Mr. Justice White join, dissenting.

Because I think the dissenting opinion of Judge Prettyman in the Court of Appeals gives a more accurate picture of the relevant facts and issues in this case than does the opinion of the Court, and because I agree with the legal conclusion Judge Prettyman reached for the reasons he gave, I set out his dissent below and adopt it as my own.

> "Mrs. Yazell and her husband, trading as a partnership, borrowed money from the Federal Government through the Small Business Administration. They signed a note for the loan. They also signed, as security for the loan, a chattel mortgage on the merchandise in their store. They could not pay, and the Government foreclosed on the security. A deficiency remained. The Government sued on the note, praying judgment for the balance of the loan. Mrs. Yazell moved for summary judgment on the ground that she is a married woman and so, in Texas, no personal judgment and no judgment affecting her separate estate can be rendered against her, with a few exceptions not here material. The District Court judge agreed with her, and so do my brethren on this court. I am contrari-minded.

"A loan from the Federal Government is a federal matter and should be governed by federal law. There being no federal statute on the subject, the courts must fashion a rule. This is the clear holding of *Clearfield Trust Co. v. United States.*[1]

"To effectuate the policy of the Small Business Act, loans of many hundreds of thousands of dollars each year to businesses must be made throughout the country. These loans can be made only under conditions which will reasonably assure repayment.[2] I think the Act should be of uniform application throughout the country. If local rules are to govern federal contracts in respect to the capacity of married women to contract, so too should local rules as to all other features of contractual capacity govern such contracts. Chaos which would nullify federal programs for disaster relief would arise. And of course there is no reason to restrict this decision to loans under the Small Business Act. It would necessarily apply with equal force to every other federal program which involves contracts between the Federal Government and individuals. A multitude of programs will be frustrated by it.

"It seems to me that, if a person has capacity to get money from the Federal Government, he has the capacity to give it back. The present lawsuit does not involve a general liability for debt; it involves merely the obligation to repay to the Government specific money borrowed from the Government. It seems to me that if a person borrows a horse from a neighbor he ought to be required to give it back if the owner wants it back, whether or not the borrower is a married woman. I suppose the Texas

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"[1] 318 U.S. 363 (1943).

"[2] 15 U.S.C. § 636(a)(7); 13 C.F.R. § 120.4-2(c) (1958).

law, by nullifying repayments by married women, tends to minimize ill-advised borrowing. But I think the federal rule ought to be that you must repay what you borrow.

"It seems to me that the *United States* v. *Helz*[3] was correctly decided by the Sixth Circuit and that it applies here. I would follow it." 334 F. 2d 454, 456.

Though I think that Judge Prettyman's dissent is enough to justify his rejection of the Texas law of "coverture" as a part of federal law, I consider it appropriate to add another reason, which in itself would be enough for me. The Texas law of "coverture," which was adopted by its judges and which the State's legislature has now largely abandoned, rests on the old common-law fiction that the husband and wife are one. This rule has worked out in reality to mean that though the husband and wife are one, the one is the husband. This fiction rested on what I had supposed is today a completely discredited notion that a married woman, being a female, is without capacity to make her own contracts and do her own business. I say "discredited" reflecting on the vast number of women in the United States engaging in the professions of law, medicine, teaching, and so forth, as well as those engaged in plain old business ventures like Mrs. Yazell was. It seems at least unique to me that this Court in 1966 should exalt this archaic remnant of a primitive caste system to an honored place among the laws of the United States.

"[3] 314 F.2d 301 (1963)."